

EXHIBIT 2

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA
3

4 IN RE:)
5 FERRERO LITIGATION,) Case No.
6 _____) 3:11-CV-00205-H-CAB
7)
8)
9)

10 VIDEOTAPED DEPOSITION OF LAURA RUDE-BARBATO

11 San Diego, California

12 Friday, September 30, 2011
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23 Job Number: 42117

24 Reported by: NIKKI ROY

25 CSR No. 3052

1 Deposition of LAURA RUDE-BARBATO, taken on behalf of
2 the Defendant, at 12235 El Camino Real, Suite 200,
3 San Diego, California, on Friday, September 30, 2011 at
4 9:57 a.m., before NIKKI ROY, CSR No. 3052.

5
6
7 APPEARANCES OF COUNSEL:

8
9 FOR THE PLAINTIFFS:

10 LAW OFFICE OF RONALD A. MARRON
11 BY: RONALD A. MARRON, Attorney at Law
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14

15 FOR THE DEFENDANT:

16 WILSON SONSINI GOODRICH & ROSATI
17 BY: DALE BISH, Attorney at Law
18 --and-- KEITH EGGLETON, Attorney at Law
19 650 Page Mill Road
20 Palo Alto, California 94304

21 ALSO PRESENT:

22 TOM CAVANAUGH, Videographer
23
24
25

I N D E X

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LAURA RUDE-BARBATO		
	MR. BISH	6, 120

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INFORMATION REQUESTED

(None)

1 SAN DIEGO, CALIFORNIA, FRIDAY, SEPTEMBER 30, 2011

2 9:57 A.M.

3
4 THE VIDEOGRAPHER: Good morning. This is the
5 start of tape labeled number 1, Volume I, in the
6 videotaped deposition of Laura Rude-Barbato in the matter
7 In Re Ferrero Litigation held in the United States
8 District Court, Southern District of California, case
9 number 3:11-CV-00205-H-CAB.

10 This deposition is being held at Wilson,
11 Sonsini, Goodrich & Rosati, 12235 El Camino Real,
12 San Diego, California, on September 30th, 2011, at
13 approximately 9:57 a.m.

14 My name is Tom Cavanaugh from TSG Reporting,
15 Incorporated. I'm the legal video specialist. The court
16 reporter is Nikki Roy in association with TSG Reporting.

17 Would counsel please introduce yourselves.

18 MR. BISH: Good morning. Dale Bish from
19 Wilson, Sonsini for defendant Ferrero U.S.A., Inc.

20 MR. EGGLETON: Keith Eggleton for defendant.

21 MR. MARRON: Ronald Marron for the plaintiffs.

22 THE VIDEOGRAPHER: Thank you.

23 Would the court reporter please swear in the
24 witness.

1 LAURA RUDE-BARBATO

2 called as a deponent and sworn in by
3 the deposition officer, was examined
4 and testified as follows:

6 EXAMINATION

7 BY MR. BISH:

8 Q. Good morning, Ms. Rude-Barbato.

9 A. Yes.

10 Q. Do you prefer Rude-Barbato or Ms. Barbato?

11 A. Either.

12 Q. Okay. Great.

13 Have you ever had your deposition taken before?

14 A. No.

15 Q. So before we begin I'll just go over a few
16 ground rules. Okay?

17 In general, I'm going to be asking questions
18 and you're going to be providing answers. For the
19 benefit of the reporter, it's most helpful if we each
20 talk in turn. Meaning that I finish my question before
21 you begin your answer?

22 Does that make sense?

23 A. Yes.

24 Q. And similarly, if you could -- your answer
25 could be yes or nos as opposed to "uh-huh" or "huh-uhs."

1 I forget sometimes as well but -- so I will try to remind
2 you if I start hearing those answers. And also, no
3 shaking of the heads or nodding because she can't take
4 down that down.

5 Do you understand?

6 A. Yes.

7 Q. Okay. And today --

8 A. Sorry.

9 Q. -- I'm looking for your best recollection of
10 events.

11 Do you understand?

12 A. Yes.

13 Q. I'm not asking you to guess unless I
14 specifically ask you to guess. I'm trying to figure out
15 what you remember.

16 You understand?

17 A. Yes.

18 Q. And is there any reason you can't offer your
19 best recollection today?

20 A. No.

21 Q. For example, are -- you're not on any
22 medications that could impair your memory?

23 A. No.

24 Q. Okay. Any questions before we begin?

25 A. No.

1 Q. Who is your lawyer in this litigation?

2 A. Ron Marron.

3 Q. Anybody else?

4 A. The Weston Group, I believe.

5 Q. Who did you hire first?

6 A. Ron Marron.

7 Q. When did you hire Ron?

8 A. It'd be January.

9 Q. January?

10 A. 2010.

11 Q. 2010?

12 A. Or '11, I'm sorry.

13 Q. Before hiring Mr. Marron, did you spend any
14 time researching potential counsel?

15 A. No.

16 Q. How did you find Mr. Marron?

17 A. He's an acquaintance.

18 Q. Would you characterize Mr. Marron as a friend?

19 A. An acquaintance.

20 Q. Okay. When did you first meet Mr. Marron?

21 A. November of 2010.

22 Q. Where did you meet Mr. Marron?

23 A. At the West Coast Cafe.

24 Q. Do you recall when in January you hired
25 Mr. Marron for this lawsuit?

1 A. No.

2 Q. Was it close to the -- the new year?

3 A. I don't remember.

4 Q. Martin Luther King weekend?

5 A. I don't remember.

6 Q. Don't remember.

7 A. It was a busy month for me.

8 Q. Okay. How so?

9 A. It was our grand opening.

10 Q. Grand opening at the West Coast Cafe?

11 A. Right.

12 Q. Okay. And what about the Weston firm, when did
13 you -- who do you -- who are your lawyers at the Weston
14 firm?

15 A. I don't know them.

16 Q. You don't know them?

17 A. Huh-uh.

18 Q. Have you ever met Greg Weston?

19 A. No.

20 Q. Have you ever met Jack Fitzgerald?

21 A. No.

22 Q. You ever talked to either of those individuals?

23 A. No.

24 Q. Ever communicated in e-mail with those
25 individuals?

1 A. No.

2 Q. Okay. Did you hire the Weston firm?

3 A. No.

4 Q. So do you --

5 A. I hired Ron Marron.

6 Q. So do you have any written agreement with the
7 Weston firm?

8 A. I don't believe so.

9 Q. Do you have any written agreement with
10 Mr. Marron?

11 A. Yes.

12 Q. Do you recall when you signed that written
13 agreement?

14 A. No.

15 Q. Would it have been in January?

16 A. Possibly.

17 Q. Okay. So what factors, if any, did you
18 consider in choosing Mr. Marron to be your attorney for
19 this litigation?

20 MR. MARRON: Objection; attorney-client
21 privilege.

22 Other than any communications that we've had
23 between -- if you can answer that question without
24 revealing any communications that we had between us, then
25 you may do so. But attorney-client privileges --

1 attorney-client communications are privileged and I don't
2 want you to answer anything that we -- or talk about
3 anything that we discussed, okay?

4 THE WITNESS: Okay. I trusted Mr. Marron. He
5 was known to one of my business partners for several
6 years.

7 BY MR. BISH:

8 Q. Anything else?

9 A. That's it.

10 Q. For example, you didn't look to see if
11 Mr. Marron had experience in this type of litigation?

12 MR. MARRON: Objection; attorney-client
13 privilege.

14 Other than what you've learned from your
15 counsel, if you have any independent knowledge concerning
16 my experience.

17 THE WITNESS: I don't.

18 BY MR. BISH:

19 Q. Okay. Did you negotiate a fee arrangement with
20 Mr. Marron?

21 A. No.

22 Q. No. Do you have a fee arrangement with
23 Mr. Marron?

24 A. No.

25 MR. MARRON: Objection; attorney-client

1 privilege.

2 Other than what you've learned from your
3 counsel, you can answer.

4 BY MR. BISH:

5 Q. The answer was no?

6 A. Not that I know of.

7 Q. Do you know how Mr. Marron is going to get paid
8 for his services in this case?

9 A. No.

10 MR. MARRON: Same objection.

11 Just, can you pause for a second before you
12 answer after he asks the question so I can lodge an
13 objection.

14 BY MR. BISH:

15 Q. After hiring Mr. Marron in January 2011, did
16 his firm draft a complaint on your behalf?

17 A. Yes.

18 Q. It was his firm?

19 A. Yes.

20 Q. It wasn't the Weston firm?

21 A. I believe it was his firm.

22 Q. Did Mr. Marron provide you with a copy of the
23 complaint before it was filed?

24 A. Yes.

25 Q. Mr. Marron did?

1 A. I believe so, yes.

2 Q. Do you recall approximately when you received
3 the copy of the complaint that was filed?

4 A. No.

5 Q. Just for clarity, right now I'm talking about
6 the first complaint that was filed solely on your behalf.
7 Do you recall that complaint?

8 A. No.

9 Q. No? Did you review the complaint before it was
10 filed?

11 A. I believe so.

12 MR. MARRON: Objection; form.

13 BY MR. BISH:

14 Q. Did you provide any comments to the complaint
15 before it was filed on your behalf?

16 MR. MARRON: Objection; form.

17 THE WITNESS: I don't remember.

18 BY MR. BISH:

19 Q. Do you recall providing any input one way or
20 the other on the original complaint that was filed on
21 your behalf in this action?

22 A. There was so many phone conversations, I don't
23 know if it was used for like this deposition or the
24 original complaint. I'm not sure what it was used for.
25 There were conversations with Maggie at Mr. Marron's

1 office.

2 Q. Is that Maggie Salazar?

3 A. I'm not sure of her last name.

4 Q. Oh, I'm sorry. What about Margarita Salazar?

5 A. I only know her as Maggie.

6 Q. Okay.

7 A. I'm sorry.

8 Q. Do you recall when your -- when your original
9 complaint was filed in this action?

10 A. I don't.

11 Q. You don't.

12 February 2000 -- February 4th sound about
13 right?

14 A. Yes.

15 Q. Do you recall in your complaint you allege
16 that, quote:

17 You did not discover that Ferrero's
18 labeling of Nutella spread was false, deceptive
19 or misleading until January 2011, end quote.

20 A. Yes.

21 Q. Is that correct?

22 A. Yes.

23 Q. Okay. But you don't -- do you recall when in
24 January 2011 you discovered that?

25 A. No.

1 Q. Close to the new year? You don't recall?

2 A. I don't.

3 Q. You have three children, correct?

4 A. I have seven.

5 Q. Seven, okay. This might take a while, then.

6 How old is your oldest --

7 A. I have two stepsons that are 25.

8 Q. Two stepsons, okay.

9 A. I have a stepdaughter who's 24. I have a
10 daughter who is 20. I have a son who is 16. I have a
11 son who is 14. And I have a son who is 8.

12 Q. Okay. Now, do your four oldest children still
13 live with you?

14 A. No, they do not.

15 Q. Your 16-year-old son, he lives with you,
16 correct?

17 A. Yes.

18 Q. And I saw that he's a wrestler?

19 A. He -- water polo, wrestling and baseball and
20 football.

21 Q. And he competes in triathlons?

22 A. No. The tri-athlete is my 24-year-old
23 daughter.

24 Q. So your 16-year-old son does not compete in
25 triathlons?

1 A. No.

2 Q. Okay. He plays water polo, he wrestles, he
3 plays baseball and football?

4 A. Occasionally football.

5 Q. That's a pretty active lifestyle he leads, huh.

6 Does -- about how many hours a day does he
7 exercise?

8 A. Six.

9 Q. Six hours a day?

10 A. Depending on where they're at in the season.

11 Q. Right.

12 But a lot, right?

13 A. Two minimum, six maximum.

14 Q. And does your 16-year-old son, like every
15 wrestler that I've known, count his calories pretty
16 carefully?

17 A. Yes.

18 Q. Pays very close attention to what he eats?

19 A. Yes.

20 Q. And do you pay attention to what he eats?

21 A. Yes.

22 Q. Do you count his calories?

23 A. No.

24 Q. But you watch carefully what he's -- what he's
25 eating?

1 A. Yes.

2 Q. Making sure he's getting enough energy in the
3 day?

4 A. Yes.

5 Q. That's important, right?

6 A. Very.

7 Q. Okay. Do you have any idea how many calories
8 on average he consumes in a day?

9 A. We try to keep it around 3,000 during water
10 polo, less during wrestling.

11 Q. Now, do you have any idea what percentage of
12 those calories come from fat?

13 A. No.

14 Q. Now what about your 14-year-old son?

15 A. He plays water polo, he wrestles and plays
16 baseball and football.

17 Q. So same sports as --

18 A. Yes.

19 Q. -- older brother?

20 A. Yes.

21 Q. Following in his footsteps.

22 A. Oh, and volleyball.

23 Q. And volleyball, great.

24 Any idea how many hours a day your 14-year-old
25 son exercises?

1 A. Two minimum, six maximum.

2 Q. Same?

3 A. Uh-huh.

4 Q. Any idea how many calories per day your
5 14-year-old son eats?

6 A. I would say 3,000 during water polo. I'm not
7 for sure on that. I'm guessing. They eat more during
8 water polo.

9 Q. Uh-huh.

10 A. And less during wrestling.

11 Q. What about your eight-year-old son?

12 A. He is a California state champion wrestler. He
13 also plays football and baseball.

14 Q. And how many hours a day does your
15 eight-year-old son exercise?

16 A. Two.

17 Q. And do you watch the number of calories that
18 your eight-year-old son eats?

19 A. Only during wrestling. And I wouldn't say
20 calories. It's just the amount.

21 Q. What does that mean?

22 A. During wrestling season, the amount of food
23 that he intakes on a Friday night is more relevant to his
24 weight on Saturday morning.

25 Q. The rest of the week do you watch what your

1 eight-year-old son is eating?

2 A. No.

3 Q. Now, do each of your kids eat the same
4 identical portion of meals?

5 A. No.

6 Q. Okay. How do they differ?

7 A. [REDACTED] eats the most.

8 Q. [REDACTED] being the?

9 A. The 14-year-old. He's our garbage gut, we call
10 him. He also weighs the most.

11 Q. So you give [REDACTED] larger portions?

12 A. I don't -- I don't portion out their meals.
13 They dish up their own meals.

14 Q. But you watch what they're eating?

15 A. During wrestling season, I make sure that they
16 eat because they tend not to want to eat because they
17 want to make weight. So I make them eat. So if that's
18 watching them, then yeah.

19 Q. What's your current address?

20 A. 1401 9th Street.

21 Q. 1401 9th?

22 A. 9th, Imperial Beach.

23 Q. How long have you lived there?

24 A. Five years.

25 Q. And before that?

1 A. I lived on D Street in Chula Vista.

2 Q. For how long?

3 A. Two years.

4 Q. And before that?

5 A. Walnut Drive in Chula Vista.

6 Q. For how long?

7 A. Nine years.

8 Q. Okay. If you could briefly describe your
9 education for me.

10 A. I took my GED at 16. I went to junior college
11 for two years.

12 Q. Did you obtain a degree from the junior
13 college?

14 A. No, I did not.

15 Q. What'd you do after the junior college?

16 A. Worked. I worked during the time I was going
17 to college too.

18 Q. Okay.

19 A. I worked at -- I got a job at Carl's Jr. when I
20 was 16. I worked there for two years. During that time,
21 I also worked at Star Building Supply in Spring Valley.
22 When I was 18 I started working at Ace Uniforms in
23 downtown San Diego, and I worked there till I was 21.

24 When I was 21, after my daughter was born, I
25 got a job at Men's Fashion Depot. I worked there for

1 maybe a year then I went back to Ace Uniforms. Then I
2 got a job at Everything's a Dollar for merchant services
3 in El Cajon where I was an associate manager.

4 I worked at City Events as a scheduler one to
5 two years. I'm not sure exactly how long. And then I
6 was an account manager for Excel Staffing & Security.
7 And I worked there three to four years, I believe. I was
8 a stay-at-home mom for several years. I don't know
9 exactly how many. I did in-home day care and I had a
10 little -- I would clean houses for people.

11 Then I opened a business with a friend in March
12 of 2010. And then we subsequently bought West Coast Cafe
13 in Imperial Beach in November of 2010.

14 Q. What was the business that you opened in March
15 2010?

16 A. It was a deli catering services.

17 Q. And who is the friend that you --

18 A. Shawna Chalmers.

19 Q. Shawna, could you spell that for me?

20 A. S-h-a-w-n-a, C h-a-l-m-e-r-s.

21 Q. So now you own West Coast Cafe with
22 Ms. Chalmers?

23 A. Ms. Chalmers and Ms. Barros.

24 Q. Ms. Barros?

25 A. Yes, Joann. J-o-a-n-n, B-a-r-r-o-s.

1 Q. Okay. Do your kids ever eat there, at the West
2 Coast Cafe?

3 A. Yes.

4 Q. How often?

5 A. Twice a week.

6 Q. They ever eat there for breakfast?

7 A. Yes.

8 Q. How often?

9 A. Maybe twice a month.

10 Q. And what do they have?

11 A. [REDACTED]'s favorite is the stuffed croissant.

12 Q. Okay.

13 A. [REDACTED] just likes bagels.

14 Q. Anything on it?

15 A. Peanut butter, sometimes cream cheese depending
16 on his mood.

17 Q. What about [REDACTED]

18 A. He likes the biscuits and gravy.

19 MR. BISH: Okay. I'm going to mark Defendant's
20 Exhibit 7.

21 (The document referred to was marked by
22 the CSR as Deposition Exhibit 7 for
23 identification and attached to the
24 deposition transcript hereto.)

25 ///

1 BY MR. BISH:

2 Q. Do you recognize Defendant's Exhibit 7?

3 A. Yes.

4 Q. Can you describe it for the record?

5 A. It's our menu from the cafe.

6 Q. Okay. And is this the current menu?

7 A. No.

8 Q. Has it been updated since then?

9 A. Yeah. I change it almost monthly.

10 Q. Okay. What's different about it now?

11 A. The Remedy is no longer on our menu. I no
12 longer have capricola. I no longer serve roast beef. I
13 no longer have Swiss cheese. I no longer offer a
14 ciabatta. The -- the caesar salad is now done with a
15 feta crumble instead of the grated parmesan. The blue
16 cheese is also substituted for the feta crumble now.

17 Oh, we no longer carry gelato. We no longer do
18 a root beer float. I don't -- I don't see -- oh,
19 biscuits and gravy is on there, okay. On the weekend
20 special, we do a Belgian waffle as well.

21 Q. What's on that?

22 A. It's just a Belgian waffle, whatever they want.

23 Q. Syrup, jelly, whatever?

24 A. Yeah. Fresh fruit, nuts, walnuts. I have
25 slivered almonds we can put on it. We can put

1 blueberries in the waffles.

2 Q. And it comes with syrup?

3 A. If they ask for syrup. Some people put peanut
4 butter on them.

5 Q. Individual preferences?

6 A. Uh-huh, yeah. Whatever they want.

7 Q. Yeah. Now, was this menu accurate -- it says
8 updated March 18, 2011, was this -- to the best of your
9 recollection, was this the menu as of March 2011?

10 A. Yes.

11 Q. Okay. Now, when did you decide to sue Ferrero?

12 A. Well, I didn't know it was called that. I just
13 thought it was Nutella. But it was sometime in January.

14 Q. Whose decision was it to sue Ferrero?

15 A. Mine.

16 Q. What are your goals in this lawsuit, what are
17 you hoping to accomplish?

18 A. Well, I'd like my money back for those jars.
19 And advertising that is more accurate, more like a
20 Cheetos commercial than a nutritious breakfast item.

21 Q. Anything else?

22 A. No.

23 Q. So you said you would like advertising that is
24 more accurate. You're not seeking to prevent Ferrero
25 from advertising Nutella at all, are you?

1 A. No.

2 Q. Are you trying to prevent Ferrero from using
3 certain words in its advertisements for Nutella?

4 A. Yes.

5 Q. Which words?

6 A. Balanced, breakfast.

7 Q. Anything else?

8 A. Not that I can remember personally from the
9 advertisement, no. Oh, can it be more than one word?

10 Q. Sure.

11 A. Where it says "you can feel good about giving
12 this to your kids," I don't think it should say that.

13 Q. Anything else?

14 A. That's it.

15 MR. BISH: Do you have the exhibits from
16 yesterday?

17 THE WITNESS: Do I need this out still?

18 BY MR. BISH:

19 Q. No.

20 I'm going to be handing you what was previously
21 marked as Defendant's Exhibit 3.

22 MR. BISH: Ron, you didn't bring yours today?

23 MR. MARRON: No. I thought they would be
24 provided again.

25 MR. BISH: So they are.

1 MR. MARRON: So they are.

2 Thank you.

3 BY MR. BISH:

4 Q. Now, if you could turn to paragraph 29, which
5 is on page 6. Actually, first of all, do you recognize
6 this document?

7 A. Yes.

8 Q. Can you describe it for the record?

9 A. Can I describe it in what way?

10 Q. What you understand this document to be,
11 Defendant's Exhibit 3?

12 A. The complaint -- what was initially the
13 complaint about Nutella and advertising?

14 Q. Right. So actually, let me help you.

15 A. Uh-huh.

16 Q. This is the first amended consolidated
17 complaint, right, that's the title?

18 A. Uh-huh.

19 Q. And do you know what that means?

20 A. It was the first document given as part of this
21 complaint.

22 Q. Okay. All right. It's okay.

23 So looking at paragraph 29, do you see in the
24 second sentence at the end where it says:

25 Advertisements and representations by

1 defendant that Nutella is a "healthy breakfast"
2 and is "nutritious."

3 Do you see that?

4 MR. MARRON: Yeah, can you give her a chance to
5 read it, please.

6 MR. BISH: Sure.

7 MR. MARRON: Can you just read the paragraph
8 first, then he's going to ask you questions about it.

9 (Document reviewed by witness.)

10 THE WITNESS: Okay.

11 BY MR. BISH:

12 Q. My question is: Is that -- is that the essence
13 of your claim that -- that Ferrero is advertising Nutella
14 as a "healthy breakfast," and is "nutritious"?

15 A. Yes.

16 Q. Okay. The Nutella itself, you believe, is
17 being advertised as being a healthy breakfast?

18 A. That's the impression I got, yes.

19 Q. And that the Nutella itself, standing alone, is
20 a balanced breakfast?

21 A. What I saw was a commercial for Nutella.

22 Q. Right.

23 A. So yes.

24 Q. That your impression, then, your claims in this
25 case are that you want Ferrero to stop advertising

1 Nutella itself as a balanced breakfast?

2 A. Right.

3 Q. Meaning that you think that if you eat Nutella
4 with a spoon, that's not a balanced breakfast, right?

5 A. It's not.

6 Q. Okay. Is that -- is that what you're trying to
7 prevent by virtue of this litigation?

8 A. Well, even being part of a balanced breakfast.

9 Q. And what does that mean?

10 A. Like even in addition to a piece of toast, I
11 don't think it's part of a balanced breakfast.

12 Q. And why is that?

13 A. Well, because it says it's a hazelnut spread
14 but it has very little hazelnuts in it. It's mostly
15 sugar.

16 Q. Anything else?

17 A. That's it.

18 Q. Okay. Now, under -- under your definition of a
19 balanced breakfast, you don't have to have hazelnuts in a
20 breakfast to make it balanced, correct?

21 A. Correct.

22 Q. Okay. And the second -- the second reason was
23 that it's mostly sugar; is that right?

24 A. Right.

25 Q. Okay. How much sugar is too much for a

1 balanced breakfast, in your opinion?

2 A. Can I say that when I saw it being put on a
3 piece of bread, my assumption was that would be protein.
4 That that would be like that part of the -- the breakfast
5 that would be giving the breakfast protein, not sugar.
6 Like I can give them juice with sugar in it, I wouldn't
7 want juice and sugar on the bread.

8 Q. Okay. So because -- do you associate hazelnuts
9 with protein?

10 A. Right, I do. I -- well, yeah, peanut butter,
11 the hazelnuts.

12 Q. So you see that as --

13 A. Nuts, I think, are a protein, yes.

14 Q. So you see hazelnuts and you think protein?

15 A. Yes.

16 Q. Okay. And do you know if there is, in fact,
17 protein in Nutella?

18 A. I believe there is.

19 Q. Any idea how much?

20 A. No.

21 Q. Would that matter to you?

22 A. A little bit, yeah.

23 Q. And did you -- did you look to see if there was
24 protein in Nutella?

25 A. I think since I was questioning the

1 ingredients, yes.

2 Q. So you did look at the ingredients of Nutella?

3 A. I have, yes.

4 Q. When was the first time you looked at the
5 ingredients of Nutella?

6 A. January.

7 Q. Again, any idea when in January?

8 A. No.

9 Q. No.

10 And what did you learn when you looked at the
11 ingredients in Nutella?

12 A. That the first ingredient was sugar.

13 Q. That's on the label, right?

14 A. Yes.

15 Q. And what else?

16 A. It's on the label. I went home and looked at
17 the jar, yes.

18 Q. And what else did you learn when you looked at
19 the ingredients of Nutella?

20 A. That hazelnuts is the third -- was the third
21 instead of the -- I would have thought hazelnut spread,
22 hazelnut would have been the first ingredient. I mean, I
23 don't know, I don't manufacture food. But I just -- that
24 would have been my impression.

25 Q. Learn anything else from the ingredients of

1 Nutella?

2 A. No.

3 Q. Now, did you also look at the nutrition facts
4 panel of Nutella at any point?

5 A. I believe I did, yes.

6 Q. When is the first time you looked at the
7 nutrition facts panel of Nutella?

8 A. In January.

9 Q. And what did you learn from that?

10 A. What did I learn from it?

11 Q. Yes.

12 A. I don't remember.

13 Q. Do you typically look at nutrition facts panels
14 for the products you buy?

15 A. No.

16 Q. Never?

17 A. Sometimes, but not -- it's not a typical
18 shopping routine of mine, no.

19 Q. Why not?

20 A. Most of the foods that I buy I've been buying
21 for years. When I'm dieting maybe I look a little bit
22 closer at the calorie content. Or when I was on a no
23 carb diet I looked more closely at it. When my son's
24 trying to make weight for wrestling, I might look. But
25 it's not a general -- I don't do it on a regular basis.

1 Q. So sometimes in your life certain
2 characteristics have been important to you, like
3 carbohydrates, right?

4 A. Uh-huh.

5 Q. "Yes"?

6 A. Yes.

7 Q. And other times those characteristics were less
8 important to you?

9 A. Yes.

10 Q. Right.

11 So even just you, as an individual, that
12 changes over time, correct?

13 A. Yes.

14 Q. And it's different person by person, right?

15 A. I would imagine.

16 Q. So, for example, what's important to you might
17 not be important to somebody else, right?

18 MR. MARRON: Yeah, objection. This calls for
19 an expert opinion and conjecture. She doesn't know what
20 other people are thinking.

21 THE WITNESS: I don't.

22 BY MR. BISH:

23 Q. But you would imagine that, right?

24 MR. MARRON: Objection; form.

25 THE WITNESS: I mean, I wouldn't know. I

1 haven't taken a poll. I could.

2 BY MR. BISH:

3 Q. But things have been -- even for you, things
4 have been different throughout your life. Things have
5 been important and --

6 A. For me -- for me, honestly, nutrition is based
7 on -- this, I've never tasted Nutella. I bought this for
8 my kids. And my goals for their diet change depending on
9 what sport they're playing. So yeah, it changes.

10 Q. Time of year even, right?

11 A. Yeah, depending on the season. Wrestling is
12 way different than water polo.

13 Q. And you need different things for the different
14 sports, right?

15 A. Right.

16 Q. Okay. But -- and I had asked how much sugar is
17 too much sugar, in your opinion, for a balanced
18 breakfast.

19 Do you remember that question?

20 A. Yes.

21 Q. Do you have an amount of sugar that's too much
22 for breakfast? Do you have any way to quantify that?

23 A. I wouldn't let my kids have a candy bar for
24 breakfast. I wouldn't let them have a piece of cake for
25 breakfast. I wouldn't give them cookies for breakfast.

1 I would want something more nutritious than that.

2 If I made them oatmeal, I would put maybe one
3 teaspoon of sugar on it. I don't think it would need
4 more than that.

5 Q. Is that just your personal preference?

6 A. Right.

7 Q. "Yes"?

8 A. Yes.

9 Q. But now, do you have a -- like I said, do you
10 have a way to objectively quantify how much sugar is too
11 much for a balanced breakfast?

12 A. No.

13 Q. No.

14 So you said no candy bar, no cake, no cookies
15 for breakfast, right?

16 A. Right.

17 Q. And that's not -- is that not dependent on the
18 nutritional value of those foods. That's -- you just
19 think those are not the right foods for breakfast?

20 A. I don't think they're nutritious foods for
21 breakfast.

22 Q. Well, are some -- some cookies can be healthy,
23 though, right?

24 A. Sure. Yeah.

25 Q. You can make them from different ingredients to

1 have whole grains?

2 A. Yeah. We --

3 Q. No sugar?

4 A. We have a vegan cookie at the shop that's
5 really good. It has flax seed in it. It's made with
6 whole oats. It's a pretty good cookie. It does have a
7 lot of sugar in it. I never brought it home to give my
8 kids for breakfast.

9 Q. But you could -- that cookie could be made
10 without sugar, right?

11 A. Probably.

12 Q. Just don't add it, correct?

13 A. Right.

14 Q. And then, so for that cookie that had no sugar,
15 would that be acceptable at breakfast?

16 A. Yeah, but they wouldn't eat it.

17 Q. Why not?

18 A. Because it wouldn't taste good.

19 Q. The taste is important, right?

20 A. It is very important.

21 Q. The taste is -- so it's important to put things
22 on products to get the kids to eat it, right -- on or in?

23 MR. MARRON: Objection; form.

24 THE WITNESS: I don't understand what you're
25 asking.

1 BY MR. BISH:

2 Q. Well, you just said the reason they wouldn't
3 eat the cookie is because it wouldn't taste very good,
4 right?

5 A. Right.

6 Q. So you put the sugar in there and then the kids
7 would want to eat it, correct?

8 A. Yes.

9 Q. Okay. And it's important to get kids to eat
10 things that have, for example, whole grains in there,
11 right?

12 A. I don't think it's -- I don't think you should
13 do that. I don't think you should sprinkle sugar on the
14 broccoli to get them to eat broccoli.

15 Q. But you put the sugar in the cookie to get the
16 kids to eat the cookie?

17 A. To get the kids to eat it? I mean --

18 Q. Because they wouldn't eat it otherwise?

19 A. Well, I wouldn't serve a cookie as like
20 nutritious. I wouldn't consider that like a nutritious,
21 like I need you to eat this because it's part of your,
22 you know, balanced meal. It's a snack, it's extra. It's
23 because they want it not because they need it.

24 Q. So --

25 A. I guess is --

1 Q. Okay. So if we took the vegan cookie, and say
2 there was no sugar in there, would that be, in your
3 opinion, a healthy snack?

4 A. Yes.

5 Q. Okay. And say that same cookie had five grams
6 of sugar in it, would it still be a healthy snack?

7 A. I think it would be a reasonably healthy snack,
8 yeah.

9 Q. Five grams?

10 A. I don't know what five grams is. Can you put
11 that in tablespoons or teaspoons for me, or cups or?

12 Q. Well, I think it would depend on a lot of
13 things. I think, I don't know.

14 A. Well, if you're making a batch of three dozen,
15 I think more than one cup of sugar is a lot.

16 Q. Okay. Based on?

17 A. Based on making cookies.

18 Q. Your personal experience?

19 A. Yeah.

20 Q. Okay. What about the word "tasty," is it okay,
21 in your opinion, for Ferrero to describe Nutella as being
22 tasty?

23 A. Yes.

24 Q. Now, I heard you say that you never tasted
25 Nutella, correct?

1 A. Never.

2 Q. Were you ever curious to know what it tasted
3 like?

4 A. Not really.

5 Q. Is there a reason you never tasted it?

6 A. I just never did.

7 Q. No particular reason?

8 A. No particular reason.

9 Q. Did your kids tell you that it was -- tasted
10 good?

11 A. Yes, they liked it very much.

12 Q. They enjoyed eating it?

13 A. They loved it.

14 Q. Loved it.

15 A. They were upset when I took it away.

16 Q. So now would you be more comfortable with a
17 statement like "Nutella can turn a balanced breakfast
18 into a tasty one"?

19 MR. MARRON: Objection; form, incomplete
20 hypothetical.

21 You can answer.

22 THE WITNESS: I think that would be a better
23 way to advertise it.

24 BY MR. BISH:

25 Q. What about "Nutella can add taste to a balanced

1 breakfast," would you be okay with that?

2 A. Yes.

3 Q. Okay. Do you believe that multi grain toast is
4 healthy?

5 A. I do.

6 Q. Is it okay for Ferrero to describe multi grain
7 toast as being healthy?

8 A. The multi grain toast I'm familiar with is
9 Milton's. And if it was Milton's, I'd be comfortable
10 with that, yes.

11 Q. Okay. Are there other kinds of multi grain
12 toast that aren't healthy?

13 A. I don't know of any others.

14 Q. You're loyal to Milton's?

15 A. Yes.

16 Q. Local company?

17 A. No.

18 Q. No? Oh, I thought it was.

19 Why are you loyal to Milton's?

20 A. Because it's very tasty and it's good.

21 Q. Any idea how much sugar is in Milton's?

22 A. No.

23 Q. Does it matter to you?

24 A. Yeah.

25 Q. It does?

1 A. Yes.

2 Q. Would you be surprised to know there's sugar in
3 Milton's?

4 A. No.

5 Q. You just don't know how much?

6 A. I just don't know how much.

7 Q. Never cared to look?

8 A. I -- I'm sure I've looked, yes.

9 Q. But nothing -- nothing stands out?

10 A. Not that I can recall. It wasn't shocking to
11 me.

12 Q. So if it was, say, five grams, five grams
13 wouldn't be shocking to you?

14 A. I don't -- tablespoons, teaspoons, cups I'm
15 more familiar with than grams and --

16 Q. So if you saw --

17 MR. MARRON: Metric.

18 BY MR. BISH:

19 Q. If you saw Milton's, if you looked at the
20 nutrition facts label of Milton's and it said five grams
21 per serving, that wouldn't stand out to you?

22 A. I don't think so.

23 Q. Because that's not very much?

24 A. I don't know.

25 Q. Okay.

1 MR. MARRON: Dale, when it's convenient, can we
2 take a break.

3 MR. BISH: Yeah, let's just finish a couple
4 things.

5 MR. MARRON: Sure.

6 BY MR. BISH:

7 Q. Now, in general, do you want companies to tell
8 consumers what is in their product?

9 A. Yes.

10 Q. Okay. So is it okay, for example, for Ferrero
11 to tell consumers that Nutella contains cocoa?

12 MR. MARRON: Objection; calls for a legal
13 conclusion, expert opinion, incomplete hypothetical,
14 form.

15 THE WITNESS: Can you repeat it?

16 BY MR. BISH:

17 Q. In your opinion, is it okay for Ferrero to tell
18 consumers that Nutella contains cocoa?

19 A. Yes.

20 Q. Okay. And what about hazelnuts, is it okay for
21 Ferrero to tell consumers that Nutella has hazelnuts?

22 MR. MARRON: Same objection.

23 THE WITNESS: My personal opinion?

24 BY MR. BISH:

25 Q. Yes.

1 A. I think it would be okay to put it in the
2 ingredients. But to advertise it as a hazelnut spread, I
3 don't believe is accurate.

4 Q. Now, if you look at the side of the Nutella jar
5 that you brought, you see where it says "made from" --
6 "with over 100 hazelnuts per jar."

7 Do you see that?

8 A. Uh-huh.

9 Q. Is that an okay statement to you?

10 A. There, yes.

11 Q. Okay. Now, I think we've covered this but I
12 just want to be clear. What is it about Nutella that you
13 feel is unhealthy? Let's be as specific as possible.
14 You've talked about the sugar, right?

15 A. The most prominent ingredient is sugar.

16 Q. Okay. Anything else?

17 A. It doesn't have -- the hazelnuts is not one of
18 the main ingredients. It's not one of the first two
19 ingredients, therefore, I don't think it's one of the
20 main ingredients.

21 Q. What is your definition of a main ingredient?

22 A. It would be half or more than half of the
23 product.

24 Q. Anything else? So we have sugar and hazelnuts.
25 Anything else?

1 A. No.

2 Q. Okay.

3 MR. BISH: This is -- we can -- this is as good
4 a time as any.

5 MR. MARRON: Okay.

6 THE VIDEOGRAPHER: All agreed to go off the
7 record, we're off the record at 10:43 a.m.

8 (Recess from 10:43 a.m. to 11:00 a.m.)

9 THE VIDEOGRAPHER: We're back on record at
10 11:00 a.m.

11 BY MR. BISH:

12 Q. Ms. Barbato, am I correct in understanding that
13 you purchased Nutella on two occasions?

14 A. At least.

15 Q. Maybe more?

16 A. Possibly more.

17 Q. Sitting here today, what's your -- what's your
18 best recollection of how many times you bought Nutella?

19 A. I think I might have made three purchases of
20 Nutella.

21 Q. That's your best recollection, three?

22 A. Yes.

23 Q. Okay. So let's discuss each.

24 To the best of your recollection, when is the
25 first time you bought Nutella?

1 A. The first time I bought Nutella was either at
2 the Albertsons or the Vons, and it was a smaller jar.

3 Q. And what's your best recollection as to when
4 that was?

5 A. Last year's school year was '10-'11, right.
6 '10-'11. So it would have been August of 2010 -- or
7 nine. Nine. No, it was '10-'11, so it would have been
8 '10. I'm sorry. I'm just thinking, my son, when he
9 first started second grade is when I first bought
10 Nutella. We moved to a new school.

11 Q. So August 2010 is, sitting here today, is your
12 best --

13 A. Right.

14 Q. -- recollection?

15 A. Right.

16 Q. And you're pretty confident about that?

17 A. Yes.

18 Q. It wouldn't have been 2009?

19 A. It might have been 2009 because he played
20 baseball also in 2009. But I believe it was 2010.

21 Q. And just, what's the connection between the
22 baseball and Nutella?

23 A. It was where -- where he -- he tried Nutella
24 was with [REDACTED] who he played baseball with and then went
25 to second grade with at Oneonta Elementary.

1 Q. So he tried it with a --

2 A. At a friend's house.

3 Q. At a friend's house, and he liked it?

4 A. Yes.

5 Q. And [REDACTED] plays baseball?

6 A. Plays baseball and they go to the same school.

7 Q. So he came home, said mom, I love Nutella?

8 A. Uh-huh.

9 Q. "Yes"?

10 A. Yes. Sorry.

11 Q. And so you're not positive if it was an
12 Albertsons or Vons. There's some confusion about that?

13 A. I believe it was one of the stores closer to my
14 house. It was a smaller jar. It was just to see if they
15 all liked it. I didn't buy a large quantity of it. I
16 wasn't sure that the older boys would like it. So my
17 first purchase was a smaller purchase.

18 Q. So you bought the smaller jar, they tried it,
19 they all liked it?

20 A. Yes.

21 Q. Do you know if it was Vons or Albertsons?

22 A. Most likely was Albertsons but it could have
23 been Vons.

24 Q. Are the -- are those the two places that you
25 typically shop at?

1 A. No.

2 Q. Where do you typically shop at?

3 A. For my home, Food 4 Less on Palomar.

4 Q. Anywhere else?

5 A. Costco occasionally, Save-a-Lot occasionally.

6 Q. Anywhere else?

7 A. Just for quick like little things to go get not
8 the bulk grocery shopping, I go to Albertsons, Vons,
9 because they're closer to my house. I just don't like
10 their prices.

11 Q. When you shop at Albertsons, do you use a
12 preferred savings card?

13 A. No.

14 Q. You don't have a preferred savings card at
15 Albertsons?

16 A. I used to use my friend's ex-husband's number
17 who was an employee, and I've forgotten the number. And
18 I don't believe I have one.

19 Q. Do you still use that number?

20 A. I've forgotten the number, so I don't use it.

21 Q. Maybe that's why you don't like their prices?

22 A. It is why I don't like the prices.

23 Q. And is there a reason why you haven't signed up
24 for your own account?

25 A. I don't go there very often. Maybe like an

1 emergency quick loaf of bread, milk, something small. I
2 don't bulk shop there at all.

3 Q. Now, what about Vons, do you have a Vons Club
4 Card?

5 A. I might. I probably do. It might be under my
6 old phone number, which would be (619) 385 -- oh, see, I
7 wouldn't have used it. 0336, maybe. It would have been
8 my old phone number from D Street if I had a Vons card.

9 Q. Okay. Now, in shopping for your family, are
10 there any health issues that affect your decisions?

11 A. Health issues as far as my kids having health
12 issues?

13 Q. Or you?

14 A. No.

15 Q. No?

16 A. No.

17 Q. So nobody's diabetic, for example?

18 A. My father was diabetic and he died of
19 complications of diabetes in '08.

20 Q. Sorry to hear it.

21 But your kids, though, not?

22 A. No.

23 Q. And you?

24 A. No.

25 Q. Are you generally a healthy person?

1 A. Yes.

2 Q. And I assume your kids are very healthy?

3 A. Way more healthy than I am.

4 Q. Blood pressure, cholesterol all fine in the
5 family?

6 A. Yes. Yes.

7 Q. Any allergies in the household?

8 A. My husband has allergies. You know, like mold
9 allergies and your general like pollen and stuff like
10 that.

11 Q. But no food allergies in the household?

12 A. [REDACTED] has broken out before from a cornmeal --
13 or the breading on corn dogs. And then [REDACTED] and I are
14 both allergic to penicillin.

15 Q. Okay. Not like medical allergies, how about
16 just food?

17 A. (No audible response.)

18 Q. Okay. No? So nobody's allergic to peanuts,
19 for example?

20 A. No.

21 Q. Does your household eat a lot of peanut butter?

22 A. Yes.

23 Q. A lot?

24 A. I buy it every week.

25 Q. For your household?

1 A. Yes.

2 Q. Okay. So take me back to the -- that first day
3 at Vons or Albertsons the first time you bought the small
4 jar. Who was with you?

5 A. I was alone. I don't like to take them
6 shopping with me. I spend too much money.

7 Q. Why is that?

8 A. Because they want everything.

9 Q. And if they're with you, you give in to what
10 they want?

11 A. Probably [REDACTED] more so than the older boys,
12 but I don't take [REDACTED] with me.

13 Q. So if you could just tell me what happened.

14 You're walking down the aisle, you saw Nutella?

15 A. I believe I went specifically to buy Nutella.

16 Q. Oh, okay. And what happened? So what

17 happened, you see -- you went in there, went straight for
18 the Nutella?

19 A. Uh-huh.

20 Q. "Yes"?

21 A. Yes.

22 Q. Picked it up, did you turn it around to look at
23 the nutrition facts label or the ingredients?

24 A. No.

25 Q. You didn't turn it around?

1 A. No.

2 Q. So you just picked it up, put it in your cart,
3 went and checked out?

4 A. I probably didn't even have a cart, but yes.

5 Q. How much did you pay for it?

6 A. I don't remember. More than I pay for my
7 peanut butter, I know that.

8 Q. Don't recall?

9 A. I don't recall.

10 Q. Do you have any way to determine?

11 A. I would say between four and \$5.

12 Q. Okay. Do you have any way to determine to be
13 sure?

14 A. Well, I know it was more than I pay for my
15 peanut butter. And my peanut butter is only like 3.69,
16 usually.

17 Q. Okay.

18 A. So I think I paid maybe 4.59, 4.69.

19 Q. Are you guessing?

20 A. I'm guessing.

21 Q. Okay. No way to be sure?

22 A. No.

23 Q. So now, when you bought Nutella, were you
24 curious to know if it contained sugar?

25 A. I didn't look to see what the ingredients were.

1 I had seen the commercial on TV several times, it gave me
2 the impression it was a healthy food. Which is -- when
3 my son said that he liked it, I felt better about getting
4 it because I thought he would eat it.

5 I didn't buy it prior to that because I didn't
6 think that they would like it. They generally don't like
7 foods that are labeled healthy or advertised as healthy.
8 So I had seen the commercial a long time before I bought
9 it. But it wasn't until I knew that the little one
10 actually liked the taste of it that I decided okay, I can
11 get it, he'll eat it.

12 Q. So let me try this again. When you bought
13 Nutella, were you curious to know if it contained sugar?

14 A. I wasn't curious.

15 Q. Why not?

16 A. Because I believed that it was healthy, I
17 didn't think that the sugar content would be high. Blind
18 faith, I guess.

19 Q. Did you ever see any advertisements saying that
20 Nutella is low in sugar?

21 A. No.

22 Q. So now, when you buy products for your family,
23 is it important to you if it contains sugar or not?

24 MR. MARRON: Objection; form, incomplete
25 hypothetical.

1 You can answer.

2 THE WITNESS: There are certain foods that I
3 buy that I know contain sugar, and I buy them to be used
4 in that content, as a snack. I wouldn't give them
5 Twinkies as part of their breakfast. I know Twinkies
6 contains sugar. That would be a dessert after dinner.

7 I wouldn't -- it is important to me how much
8 sugar they eat but I'm not -- I don't generally object to
9 them having sugar. But it would be after they've had a
10 nice meal with vegetables, meat, that they've got their
11 nutrients, their vitamins. That after that, that they've
12 had a balanced meal, I don't feel that bad about them
13 having something like for a snack with sugar in it.

14 BY MR. BISH:

15 Q. So it's an issue of timing?

16 A. It's an issue of them eating right first. You
17 know, like they get everything that they need to be
18 healthy. I like my sons to have vegetables. They don't
19 generally get anything after dinner if they don't finish
20 their vegetables. They finish their meat. I'm not big
21 on the rice really. You can throw that away. But the
22 vegetables, I want them to finish. The meat, I want them
23 to finish.

24 Q. That's important to you?

25 A. It is.

1 Q. Okay. That's your personal preference?

2 A. Yes.

3 Q. Okay. And so again, it's -- the consumption of
4 sugar is one of timing?

5 MR. MARRON: Objection; misstates her
6 testimony, argumentative. She already answered that
7 question. It's been asked and answered.

8 THE WITNESS: I don't know what you mean by
9 timing. Like time of day or like after they've had a
10 balanced meal, yes.

11 BY MR. BISH:

12 Q. It's a sequential thing?

13 A. It is.

14 Q. To you?

15 A. Yes.

16 Q. Right.

17 It's not an overall diet issue. It's a
18 sequential issue to you, right?

19 MR. MARRON: Objection; misstates her
20 testimony, mischaracterizes her testimony, form,
21 incomplete hypothetical.

22 THE WITNESS: I'm not understanding. Can you
23 rephrase it? Like --

24 BY MR. BISH:

25 Q. Yeah. If -- I'm just trying to understand what

1 you're telling me, okay. I just want to make sure we're
2 on the same page with this.

3 A. Okay.

4 Q. You're okay with your kids eating Twinkies, for
5 example, after they've had vegetables?

6 A. I am okay with them having a sugary snack after
7 they've eaten a full balanced meal.

8 Q. So it's not that you're concerned about the
9 overall amount of sugar in their day. It's that you want
10 them to eat a balanced meal first and then have the
11 sugar?

12 A. I believe if they eat a balanced meal first and
13 they wait 20 minutes, they're not going to be as hungry
14 so they won't consume as much of that product. It's a
15 common phrase at my house, "if you don't finish your
16 dinner, you're not getting anything else."

17 Q. So it's -- it can be used as an encouragement?

18 A. Sometimes.

19 Q. That if you eat your vegetables, you can have
20 dessert?

21 A. Ice cream or something after dinner. And then
22 I find a lot of times they forget about what they're
23 going to have after dinner once they've eaten their whole
24 meal.

25 ///

1 MR. MARRON: Mom psychology 101.

2 BY MR. BISH:

3 Q. So let's talk about what your kids have for
4 breakfast. What'd they have this morning?

5 A. They were still sleeping when I left. They're
6 on fall break right now. Two weeks out of school.

7 Q. Nice kind of school.
8 What'd they eat yesterday?

9 A. I don't remember. I think [REDACTED] had
10 cornflakes.

11 Q. Anything else?

12 A. And I went to the shop in the morning so I
13 don't know what the big boys ate when they woke up.

14 Q. Did [REDACTED] have anything else with the
15 cornflakes?

16 A. No. Not that I seen.

17 Q. Any fruit?

18 A. Not that I've seen. But I left while he was
19 still eating, so... Apple juice.

20 Q. What kind of apple juice?

21 A. A generic brand of apple juice.

22 Q. From?

23 A. Food 4 Less. White label, two for \$3.

24 Q. Okay. So let's talk about [REDACTED] What else
25 does [REDACTED] like to eat for breakfast?

1 A. His favorite breakfast is hard boiled eggs and
2 toast. He likes --

3 Q. Milton's?

4 A. Yeah.

5 Q. Anything else with the hard boiled eggs and
6 toast?

7 A. We have a drawer in the fridge. He likes fruit
8 a lot; so orange, plum, nectarine. He doesn't like
9 apples so much. I usually have plums, nectarines,
10 oranges, pears and apples in there. He doesn't like
11 apples that much.

12 Q. Okay. So we have hard boiled eggs and toast.

13 A. Usually he has orange juice.

14 Q. Okay.

15 A. He won't drink milk unless it's like hot
16 chocolate kind of thing, you know. He'll have milk and
17 cereal if he has cereal. But he doesn't like milk very
18 much.

19 Q. So you put the chocolate in there to get him to
20 drink the milk?

21 A. I don't push it, it's not a big deal to me. He
22 eats a lot of cheese and yogurt and other things, so...
23 I don't like milk either.

24 Q. But from time-to-time he has chocolate milk or
25 cocoa?

1 A. He'll have hot cocoa maybe once every two
2 weeks.

3 Q. All right. So breakfast, number one, hard
4 boiled eggs and toast with fruit and orange juice.

5 A. Apple juice.

6 Q. Apple juice.

7 A. He doesn't like orange juice.

8 Q. Sorry.

9 Any other breakfast that [REDACTED] likes?

10 A. He likes -- we call them dippy eggs.

11 Q. Dippy eggs?

12 A. Dippy eggs, eggs over medium that he can dip
13 his toast in.

14 Q. Anything else with that?

15 A. Whatever fruit he pulls out of the drawer.
16 Sometimes it's two or three. He likes fruit.

17 Q. Okay. So that's breakfast number two.
18 Anything else?

19 A. Cereal.

20 Q. What kinds of cereal does he eat?

21 A. He likes cornflakes. He likes that Cinnamon
22 Toast Crunch.

23 Q. Okay. Any others?

24 A. He likes anything like Cocoa Krispies. Those
25 flavored Pebbles. Those flavored Rice Krispie things.

1 Q. Captain Crunch or whatever?

2 A. No, no. Like Fruity Pebbles.

3 Q. Fruity Pebbles?

4 A. Or Cocoa Pebbles or -- you know, they're like
5 Rice Krispies but they have flavor in it.

6 Q. Yeah. My brother had Fruity Pebbles every day.

7 Okay. Now, when he eats those kinds of
8 cereals, anything else that he eats along with it?

9 A. Yeah. He usually makes toast. He'll put
10 peanut butter on it. Sometimes just butter, sometimes
11 just dry. Then his -- and juice. And we either have
12 apple juice in the house or we have like the Capri Suns
13 or like the Hi-C juice box kinds of things. Or we
14 have -- they like that cran-raspberry juice. They like
15 those V-8 Fusion. You know those ones?

16 Q. With --

17 A. Those are pretty good.

18 Q. With the -- yeah, it's not the V-8 tomato
19 juice. It's the V-8 --

20 A. It's a fruit fusion thing.

21 Q. Right.

22 A. Yeah, they really like those. But they're
23 expensive, I don't have those that often.

24 Q. Yeah.

25 A. We always have a lot of juice in the house; so

1 they like juice.

2 Q. That V-8, whatever you call it, it has a fair
3 amount of vitamins in it, right, but it's sweet?

4 A. And it does have some vegetables.

5 Q. Yeah.

6 A. But it's hidden with the fruit on it.

7 Q. So it's sweet and tastes good.

8 A. So it has like carrot juice in it.

9 Q. I got a little excited. So we talked over each
10 other.

11 A. Yeah.

12 Q. Yeah.

13 So that's a pretty good way to get your --
14 that's a good example of a good way to get your kids to
15 eat nutrients, right?

16 A. Yeah.

17 Q. In a sweet juice, right? Right?

18 A. Well, I -- they have fresh fruit a lot. They
19 eat a lot of fruit. They just like the taste of it. So
20 I would prefer that they drink water, really, but that's
21 okay with me.

22 Q. But you take what you can get, right?

23 A. Yeah.

24 Q. Okay.

25 A. Water's cheaper.

1 Q. So that was [REDACTED] And it sounds like you --

2 [REDACTED]

3 A. [REDACTED] [REDACTED]

4 Q. Sounds like you trust [REDACTED] or [REDACTED] to make
5 his own breakfast; is that right?

6 A. No. When I'm home I -- he can't do dippy eggs
7 himself or hard boiled eggs himself, so I do those.
8 Cereal he can get himself, it's fine. The fruit is
9 ready, it's right there. They can get that any time they
10 want.

11 Q. And he'll put the peanut butter on the toast
12 himself and --

13 A. Yes.

14 Q. Yeah.

15 A. Put the toast in the toaster, yes. He thinks
16 he's very independent that way.

17 Q. And you trust his decision-making in all that
18 regard to eat enough, eat the right things?

19 A. Yeah. I'm not -- in the morning before school,
20 he does sometimes eat breakfast at school. So it's not
21 every day that he eats breakfast at home. I would say
22 two to three days a week he eats breakfast at school.

23 Q. Any idea what he eats there?

24 A. They have French toast sticks, they have like a
25 breakfast burrito. They do some kind of breakfast pizza

1 with sausage on it. They have cereal. They have fresh
2 fruit. They have milk. They have juice. They have --
3 oh, muffins. They do like a little muffin sometimes.
4 They do a sausage and a pancake on a stick sometimes.

5 Q. And he likes all that?

6 A. No.

7 Q. No?

8 A. Huh-uh.

9 Q. So out of all -- sorry.

10 Out of all the things you just mentioned, what
11 does he -- what does he typically eat?

12 A. What will he eat?

13 Q. Yeah.

14 A. He'll eat the breakfast pizza, maybe half of
15 it. He'll eat the fruit. He'll eat the French toast
16 sticks. Well, they do sometimes have bagels. He'll eat
17 a bagel. The juice. And they offer chocolate milk, so
18 he'll have chocolate milk there.

19 Q. Do the French toast sticks, do they come with
20 syrup?

21 A. I don't know. You know what, I know they come
22 in like a little baggy. But I don't know if they come
23 with syrup or not. I imagine they probably -- there's no
24 butter or anything else. So I don't know.

25 Q. Okay. So that was [REDACTED]

1 How about [REDACTED]

2 A. [REDACTED] [REDACTED]

3 Q. Oh, I'm sorry. I thought you said [REDACTED]

4 A. [REDACTED] is the neighbor friend.

5 Q. That's right. I'm sorry.

6 A. Okay. I know, all the Js.

7 Q. I should write this down somewhere.

8 A. We'll go to the 14-year-old, [REDACTED]

9 Q. [REDACTED] is how old, just for the record?

10 A. Eight now.

11 Q. Okay. So that was the youngest?

12 A. Yeah.

13 Q. So now we're going up to [REDACTED]

14 A. Do you want to go to [REDACTED] he's the older
15 one. Or [REDACTED] is in the middle.

16 Q. Let's do [REDACTED] is in the middle.

17 A. Okay, let's do [REDACTED] is in the middle.

18 Q. Okay. What does [REDACTED] like to eat?

19 A. Everything.

20 Q. The --

21 A. He's really not a picky kid.

22 Q. Garbage --

23 A. Garbage gut.

24 Q. Garbage gut.

25 And what does he -- what does he typically eat

1 for breakfast?

2 A. Fruit. He's usually like the last one out of
3 the shower, rushing out the door and grabs some fruit,
4 granola bar.

5 Q. Hard to get him to sit down and eat a
6 breakfast?

7 A. No. It's just hard to get him up in the
8 morning.

9 Q. Rushing?

10 A. Uh-huh.

11 Q. Okay. So fruit and a granola bar?

12 A. Uh-huh.

13 Q. Anything else? So let's call that breakfast
14 number one.

15 A. If it's water polo season, during hell week
16 it's a banana milk shake, two turkey sandwiches and a
17 peanut butter and jelly sandwich or a peanut butter and
18 banana sandwich.

19 Q. And what's in the milk shake?

20 A. Bananas, milk and ice.

21 Q. And what kind of milk, 2 percent?

22 A. No, I get whole milk.

23 Q. Now, that's so -- do you get whole milk
24 year-round or just --

25 A. Uh-huh.

1 Q. -- or just for hell week?

2 A. No, I always get whole milk.

3 Q. And why is that?

4 A. I don't know. I don't even drink milk. I have
5 no idea.

6 Q. Just what you've always done?

7 A. Yes.

8 Q. Okay. Okay. So now we have two breakfasts.
9 We have the hell week breakfast and we have the fruit and
10 granola bar breakfast.

11 Anything else he typically eats?

12 A. He eats Hot Pockets.

13 Q. Hot Pockets? What are those? I don't know
14 those.

15 A. You know, like pizza pockets; ham and cheese,
16 chicken and broccoli. They're like a roll you heat in
17 the microwave.

18 Q. And that's for breakfast?

19 A. He'll grab one on his way out the door. And
20 fruit, always fruit. Banana or oranges. He likes
21 oranges the best. Those are his favorite.

22 Q. So the pizza pockets, are those like in the
23 frozen aisle?

24 A. Uh-huh.

25 Q. "Yes"?

1 A. Yes.

2 Q. Any brand that you buy of the pizza pocket?

3 A. It's called Hot Pocket.

4 Q. Okay. I'm missing something. Okay. All
5 right. So that's the third breakfast.

6 Anything else?

7 A. When I'm making [REDACTED] eggs, he'll eat eggs. He
8 likes hard boiled eggs too, and the dippy eggs. If he
9 doesn't have school, he might make himself pancakes or an
10 omelet. He likes to cook a little bit.

11 Q. Okay. And when he eats pancakes, is it whole
12 wheat pancakes or Bisquick or?

13 A. It's -- it's not Bisquick. It's Krusteaz
14 buttermilk pancake mix.

15 Q. So he follows the ingredients on the box?

16 A. He probably doesn't. He just throws it in a
17 bowl and mixes some water till it's how he likes it.

18 Q. And does he put syrup on his pancakes?

19 A. Sometimes.

20 Q. His call?

21 A. Yeah. Sometimes he'll do peanut butter and
22 bananas.

23 Q. You have syrup in your house?

24 A. Yes, sometimes. We run out sometimes and I
25 don't get it.

1 Q. Sometimes syrup, sometimes peanut butter and
2 bananas?

3 A. And honey, yeah.

4 Q. Personal preference?

5 A. Yeah.

6 Q. His personal preference, right?

7 A. Yeah.

8 Q. What kinds of honey do you buy?

9 A. That little bear one with the yellow squeeze
10 lid.

11 Q. Where do you buy that from?

12 A. Food 4 Less. Sometimes I bring it home from
13 the shop, which is the wildflower honey from Restaurant
14 Depot.

15 Q. Okay. So I think we've covered [REDACTED] now,
16 right.

17 Anything else stands out for [REDACTED] for
18 breakfast?

19 A. During wrestling he doesn't eat breakfast.

20 Q. He does not eat breakfast?

21 A. Just a piece of fruit.

22 Q. And is that okay with you?

23 A. Prior to weigh-ins, yeah.

24 Q. Just the day of weigh in?

25 A. Uh-huh.

1 Q. "Yes"?

2 A. And the day before a meet, a match.

3 Q. Does that concern you at all that he --

4 A. Yea, it does. I don't like it. But they're a
5 lot better now, they do the hydration tests. When my
6 older sons wrestled, they didn't do that. So I feel a
7 little bit better about the way they conduct the
8 weigh-ins. They do the hydration tests, they do the body
9 weight content. And I have gone personally to weigh-ins,
10 taken the boys.

11 Q. Uh-huh.

12 A. So I do know what they do. And I'm -- I'm more
13 secure with it now than what it used to be for my older
14 sons.

15 Q. So they're trying to minimize their intake for
16 wrestling?

17 A. For weight, yes.

18 Q. And you're trying to encourage them to eat
19 more; is that right?

20 A. I'm not trying -- I think in the beginning when
21 they first started wrestling I did try to encourage them
22 to eat more. But now that I have a better understanding
23 of the hydration tests and the body fat content, I know
24 they're not going to let them wrestle if they don't pass
25 it. So they have to -- they have to eat, they have to

1 drink, they can't starve themselves. Where my older
2 sons, the 25-year-old, he would starve himself for days.
3 He would have never passed hydration test had they done
4 them then.

5 Q. Okay. All right. So now, that's [REDACTED]
6 How about -- now we're onto [REDACTED]

7 A. (No audible response.)

8 Q. Okay. What does [REDACTED] like to eat for
9 breakfast?

10 A. He'll have fruit. He'll have cereal. If I'm
11 making eggs, he'll have eggs, toast. He'll make himself
12 a sandwich sometimes.

13 Q. Okay.

14 A. If it's a day off of school, he likes
15 quesadillas.

16 Q. For breakfast?

17 A. Uh-huh.

18 Q. Okay. So let's talk first about the cereal.
19 What kind -- same cereals we discussed earlier?

20 A. Yeah. And then he does the same breakfast
21 during hell week and water polo as [REDACTED] with the banana
22 shakes and the two turkey sandwiches and a peanut butter
23 and jelly sandwich.

24 Q. So the cereal is, what, the Cinnamon Toast
25 Crunch?

1 A. The cornflakes, Cinnamon Toast Crunch.

2 Q. Fruity Pebbles?

3 A. He doesn't really like Fruity Pebbles.

4 Q. Cocoa Krispies?

5 A. He likes the Cinnamon Toast Crunch. Mostly he
6 likes the cornflakes and he'll put bananas in it or...

7 Q. What about the sandwich, when he makes a
8 breakfast sandwich, what's -- what's inside?

9 A. It's usually two pieces of Milton's bread and
10 turkey, no mayonnaise, no mustard.

11 Q. Anything else inside?

12 A. No.

13 Q. Okay. What about the quesadilla, what kind,
14 cheese quesadillas or?

15 A. Yeah. He'll use -- we get the shredded Colby
16 Jack cheese. He might do a scrambled egg in it.

17 Q. When he makes himself a quesadilla, anything
18 else along with that?

19 A. Yeah. Well, juice, fruit. And it's, you know,
20 usually three or four quesadillas.

21 Q. Three or four, like how big?

22 A. Well, you fold them in half, you know.

23 Q. So with the --

24 A. Yeah.

25 Q. The 12-inch tortilla, fold it in half?

1 A. Maybe it's 10-inch tortillas instead of 12.

2 Q. Ten, okay.

3 A. They're not those big burrito ones.

4 Q. Okay.

5 A. And then during wrestling, he won't eat
6 breakfast either. He usually just has a piece of fruit
7 and water.

8 Q. In your opinion, is that a good enough
9 breakfast?

10 A. No.

11 Q. I should have asked: When you bought the
12 Nutella at Albertsons or Vons the first time, did you use
13 an ATM card or a credit card?

14 A. I might have. I don't know. I don't remember.

15 Q. Do you have your credit card statements going
16 back that far?

17 A. I'm sure I could get them, yeah.

18 Q. Online or something?

19 A. Yeah. Well, I've closed -- the Wells Fargo
20 account is closed, and the Union Bank account, but I'm
21 sure I could still get them.

22 Q. You haven't looked in connection with this
23 lawsuit?

24 A. No.

25 Q. Did anybody ask you to?

1 A. No. I was asked to look for receipts but not
2 through my bank statement.

3 Q. And you looked for receipts?

4 A. I did.

5 Q. Don't have any?

6 A. No.

7 Q. Do you typically keep receipts?

8 A. No. For my business only.

9 Q. Right.

10 And why is that?

11 A. For my business?

12 Q. Right.

13 A. Profit and loss statements.

14 Q. Okay.

15 A. Cost of goods.

16 Q. Tax purposes?

17 A. I -- we don't generally have to take them for
18 taxes. But we keep them in case we need them, yeah.

19 Q. Okay. So do you keep your business records
20 separate from your personal records?

21 A. Of course, yes.

22 Q. Okay. And you mentioned Costco earlier, right?

23 A. Right.

24 Q. And I believe you have an account for --

25 A. My business.

1 Q. -- West Coast Kitchen?

2 A. Right.

3 Q. And an account for yourself, right?

4 A. I had one for myself personally and then I did
5 not continue that one after we opened the business. I
6 don't need two. So I had one for me personally, a Costco
7 card that my husband's employer had got for us as, you
8 know, a benefit of his working there or something. And
9 then I didn't continue the personal Costco membership
10 because we bought one for the business.

11 Q. Okay. When did you stop using the personal
12 membership?

13 A. Probably 2010 sometime.

14 Q. So now, when you go to Costco, do you -- are
15 you buying things for West Coast Kitchen and your house
16 at the same time?

17 A. At the same time but rang up on different
18 receipts.

19 Q. I see.

20 And you keep -- so you keep the receipts for
21 the kitchen?

22 A. For the business.

23 Q. Don't keep the receipts for your personal?

24 A. Not unless I've used the American Express to
25 pay for my personal because then I have to pay for that

1 personally.

2 Q. I see.

3 Okay. So now, your counsel has brought two
4 jars of Nutella.

5 Do you understand that these were from your
6 house?

7 A. Yes.

8 Q. Okay. It appears to me that the first jar is
9 nearly empty, right?

10 A. Correct.

11 Q. Second jar is unopened, right?

12 A. Correct.

13 Q. And you bought these jars at Costco; is that
14 correct?

15 A. Yes, I got them together in one.

16 Q. Right.

17 It came wrapped together?

18 A. Dual pack, yeah.

19 Q. And can you describe how your family ate the
20 Nutella, both the 13-ounce smaller jar and this larger
21 jar?

22 A. On toast in the morning.

23 Q. On Milton's?

24 A. Uh-huh. And also in a sandwich with bananas.

25 My kids prefer like bananas over jelly, bananas and honey

1 over jelly. But they eat jelly too. But if we have
2 bananas, they'll use bananas. So they made it like a
3 peanut butter and jelly or peanut butter and banana
4 sandwich. And then they all spooned it right out of the
5 jar, I'm sure.

6 Q. Quickly, before I forget, what kind of jelly do
7 you buy?

8 A. Just the generic brand jelly at Food 4 Less.
9 White label grape jelly. And then my girlfriend makes
10 home made strawberry jam. Everybody likes that a lot.

11 Q. Who doesn't like homemade jam.

12 So let's talk about when they put Nutella on
13 toast in the morning. So the kids do it themselves?

14 A. Uh-huh.

15 Q. "Yes"?

16 A. Yes.

17 Q. You didn't do it?

18 A. I probably did it a couple times for them.

19 Q. Any idea how much you were putting on the
20 toast?

21 A. Probably three tablespoons, two to three
22 tablespoons.

23 Q. Okay. And what about when your kids did it,
24 any idea how much they were putting on?

25 A. Probably about the same.

1 Q. Two to three tablespoons?

2 A. Yeah.

3 Q. Okay. And how did you decide how much to put
4 on there?

5 A. By the look of it.

6 Q. Just kind of --

7 A. Just, yeah, like I would do a peanut butter
8 sandwich.

9 Q. And you didn't taste it after?

10 A. I never tasted it. I should have tasted it. I
11 never tasted it.

12 Q. It's not too late.

13 Did anybody ever put it on ice cream?

14 A. No.

15 Q. But you do have ice cream in your house, right?

16 A. Sometimes.

17 Q. What kind of ice cream do you buy?

18 A. [REDACTED]'s favorite is sherbert, rainbow sherbet.

19 Q. Anything else?

20 A. I don't buy ice cream. My husband will buy ice
21 cream. I don't really.

22 Q. What kinds does he buy?

23 A. I don't know what -- like --

24 Q. Dryer's, Breyers?

25 A. Oh, I don't know. Moose Tracks is like one.

1 Q. Moose Tracks. Is that like a specialty brand
2 or -- I don't know. I don't know what it is?

3 A. I don't know. It has like candy bars in it or
4 something. I don't eat ice cream very -- I don't like
5 ice cream.

6 Q. But do your kids?

7 A. They do, but I don't buy ice cream.

8 Q. Right.

9 A. My husband will buy ice cream. I don't really
10 buy ice cream very often.

11 Q. But your kids will eat the ice cream your
12 husband buys?

13 A. They will eat, yes.

14 Q. Moose Tracks?

15 A. Moose Tracks, I've seen that one in there. I
16 don't know. He like -- cheesecake, cherry cheesecake
17 maybe or strawberry cheesecake kind of thing.

18 Q. And your kids eat that too?

19 A. Yeah. [REDACTED] doesn't eat the others, he just
20 likes the rainbow sherbet.

21 Q. But [REDACTED] and [REDACTED]

22 A. They'll eat whatever's in there, yeah. Unless
23 they're trying to make weight and then they won't eat
24 nothing.

25 Q. Do you recall when you went to Costco to buy

1 the two packet of Nutella?

2 A. I don't remember when it was.

3 Q. Do you have any idea? This year, for example?

4 A. Yeah, I don't know. I really don't know.

5 Honestly, I would look at the dates on here maybe. I
6 don't know.

7 Q. I don't think that would help you much.

8 A. It says "sell by October 2011." See, I can't
9 even use that one no more.

10 Q. Well, it's evidence now so nobody can use it.

11 MR. MARRON: Yeah, I was going to ask you about
12 that. How do we want to work out --

13 MR. BISH: Control?

14 MR. MARRON: Yeah.

15 MR. BISH: I'll ask you to hold onto it.

16 MR. MARRON: Okay.

17 BY MR. BISH:

18 Q. So you don't recall when you were at Costco
19 buying the jars in front of us?

20 A. (No audible response.)

21 Q. Do you recall what else you bought at Costco
22 that day?

23 A. No.

24 Q. Okay.

25 MR. MARRON: Can we take a break whenever you

1 get a chance?

2 MR. BISH: Yeah. Let's do it.

3 THE VIDEOGRAPHER: All agreed to go off the
4 record, we're off the record at 11:44 a.m.

5 (Recess from 11:44 a.m. to 11:54 a.m.)

6 (The document referred to was marked by
7 the CSR as Deposition Exhibit 8 for
8 identification and attached to the
9 deposition transcript hereto.)

10 THE VIDEOGRAPHER: We're back on the record at
11 11:54 a.m.

12 BY MR. BISH:

13 Q. Ms. Barbato, during the break I had the
14 reporter mark as Defendant's Exhibit 8 the document that
15 she's just handed to you.

16 My first question is: Have you seen
17 Defendant's Exhibit 8 before?

18 A. No.

19 Q. Never?

20 A. No.

21 Q. So I will -- I'm going to describe what it is.

22 Are you aware that our firm subpoenaed
23 Costco --

24 A. Yes.

25 Q. -- for your records?

1 This is what we received from Costco with
2 respect to you, okay?

3 A. Uh-huh.

4 Q. And so at the top of this -- or about a third
5 of the way down the first page of Defendant's Exhibit 8,
6 you'll see that it says "Redacted." And I will represent
7 that the cover letter that we received from Costco said
8 that was -- they redacted the West Coast Kitchen account.

9 Do you understand?

10 A. Uh-huh.

11 Q. Okay. Because we hadn't asked for it, okay.

12 You see the second -- below that it says --

13 MR. MARRON: So they redacted and then they
14 told you what they redacted?

15 MR. BISH: Yeah, although I didn't give the
16 card number.

17 MR. MARRON: Okay.

18 MR. BISH: Or, I believe, the records. But
19 we're going to try to figure that out.

20 MR. MARRON: Okay.

21 BY MR. BISH:

22 Q. Below that you see it says "Laura Barbato"?

23 A. Yes.

24 Q. And it has the current card number, you see
25 that?

1 A. Yes.

2 Q. And it says the sign-up date is March 2010.

3 You see that?

4 A. Yes.

5 Q. So before when we were talking about personal

6 versus West Coast Kitchen account, do you know which

7 account that that's referring to, the March 3rd, 2010?

8 Is that your personal --

9 A. The opening of --

10 Q. Yeah.

11 A. That's the West Coast Kitchen.

12 Q. So all the purchases on that account were made

13 for West Coast Kitchen?

14 A. No. Some of -- I've made personal --

15 Q. Right.

16 A. I've made personal purchases as well.

17 Q. Okay. And you kept the receipts for the West

18 Coast Kitchen purchases. So if we need to figure out

19 what was for what, we can do that with the receipts,

20 correct?

21 A. Right, but I might have separated the items.

22 In --- in other words, I will put all of the items for

23 West Coast Kitchen --

24 Q. Uh-huh.

25 A. -- in one order and put a divider. And then

1 put my personal items as a separate receipt, as a
2 separate transaction.

3 Q. Okay. So just to be -- err on the side of
4 caution, I'm going to ask that you make sure you save all
5 those receipts, okay, for purposes of this litigation.
6 All right? You understand? Don't throw them away.

7 A. Right, but I don't know that I have the Nutella
8 receipt.

9 Q. I know. I understand. But --

10 A. Oh, okay.

11 Q. -- I'm saying for the receipts showing what you
12 bought for West Coast Kitchen. Whatever you have --

13 A. Oh, I have those.

14 Q. -- I'm asking you to retain those.

15 A. I do have those, yes. Okay.

16 Q. You understand me?

17 A. Yes, uh-huh.

18 Q. Have you thrown away any receipts for West
19 Coast Kitchen since this lawsuit was filed?

20 A. No.

21 Q. Okay, excellent.

22 A. I may have lost one or two, but I haven't
23 thrown any away.

24 Q. Inadvertently?

25 A. Correct.

1 Q. And now, just to make sure I understand, I'm
2 trying to figure out if I need to go back to Costco for
3 the other account. The West Coast Kitchen account, the
4 one that has been redacted, you have not used that
5 since -- since when?

6 A. I use that one all the time.

7 Q. The one that was redacted?

8 A. What do you mean redacted?

9 Q. Sorry. There's the -- there is another
10 account, and I don't know when it was opened, that
11 Costco's redacted. And then another -- then a second
12 account was opened on March 2010. And if I understand
13 you, that's the one you're using today, correct?

14 A. Correct.

15 Q. The one -- the other account you're not using
16 today, correct?

17 A. No.

18 Q. And when's the last time you used that?

19 A. I don't remember.

20 Q. Okay?

21 A. It was prior to the opening of the West Coast
22 Kitchen account, though.

23 Q. Possibly in 2009?

24 A. Possibly.

25 Q. In 2008?

1 A. Possibly 2010.

2 Q. Okay. Okay. So if you could turn to page 8 of
3 Defendant's Exhibit 8.

4 Are you with me?

5 A. Yes.

6 Q. You see about a third of the way down the page
7 in the sale date column, there's a number of purchases
8 made on January 10th, 2011?

9 A. (No audible response.)

10 Q. "Yes"?

11 A. Yes.

12 Q. Do you recall if you were shopping at Costco on
13 January 10, 2011?

14 A. I don't remember.

15 Q. Okay. If you could take a moment and review
16 the purchases made on January 10, 2011, I'm just -- my
17 first question is: Do you think that was you that was
18 making the purchases as opposed to somebody else?

19 (Document reviewed by witness.)

20 THE WITNESS: Yes.

21 BY MR. BISH:

22 Q. Yes, it was you that was shopping?

23 A. I believe it was me that was shopping, yes.

24 Q. Okay. And at the top of page 9 of Defendant's
25 Exhibit 8 you see that there's an entry for "Nutella

1 Hazelnut 2/26.5 z."

2 You see that?

3 A. Yes.

4 Q. Now, is that -- do you believe that was -
5 reflects the purchase of the two Nutella jars sitting in
6 front of us?

7 A. I believe so.

8 Q. Okay. That was made on January 10th of this
9 year, correct?

10 A. Okay.

11 Q. That's what these records reflect --

12 A. Yeah.

13 Q. -- right?

14 A. Yeah.

15 Q. Do you have any reason to believe that these
16 records are inaccurate?

17 A. No.

18 Q. So do you -- sitting here today, do you believe
19 you bought Nutella on January 10th, 2011?

20 A. Yes.

21 Q. Okay. Was that before or after you had hired
22 Mr. Marron for this lawsuit?

23 A. Before.

24 Q. Approximately how many days before?

25 A. Maybe two weeks.

1 Q. Okay. Is that -- are you guessing or?

2 A. I'm guessing by how much of the Nutella was
3 eaten.

4 Q. I see.

5 But do you have any independent recollection
6 of --

7 A. No.

8 Q. You don't know if it was one week or two weeks?

9 A. No.

10 Q. Okay. But you did hire Mr. Marron in January
11 2011 for this lawsuit --

12 A. Yes.

13 Q. -- correct?

14 So between the date, between January 10th,
15 2011, and the date you hired Mr. Marron, did your family
16 consume nearly a full jar?

17 A. Yes, they did.

18 Q. Of Nutella?

19 A. Yes.

20 Q. Because they loved it, right?

21 A. They do like it, yes.

22 Q. "Loved it" I think you said earlier?

23 A. They were upset when I took it from them.

24 Q. And why did you take it from them?

25 A. Because I had heard that it wasn't as

1 nutritious as I thought it was for them. It wasn't
2 wholesome. It wasn't good for them.

3 Q. How --

4 A. I had heard, too, from somebody else, and I
5 researched it later and found out that was incorrect.
6 But I had heard from somebody else too that it could
7 contain trans fat. And so I took it immediately from
8 them. Trans fat is something I'm not allowed to have in
9 my restaurant. I know that - from that, I would say
10 that's really bad for you.

11 So my impression was that it had the trans fat
12 in it. It had things that weren't good for my kids in
13 it. I took it immediately from them.

14 Q. Who told you it had trans fat?

15 A. I don't remember. I really don't remember.

16 Q. Was it your lawyers?

17 A. No.

18 Q. A friend?

19 MR. MARRON: If you remember.

20 I mean, I don't want my client to engage in any
21 speculation or conjecture.

22 THE WITNESS: I can't remember who it was. I
23 know it wasn't Ron. I don't remember who it was.

24 BY MR. BISH:

25 Q. What do you recall about that conversation?

1 A. I don't -- I don't even recall the
2 conversation, but I know I had heard that somewhere.

3 Q. From, during?

4 A. I don't remember who.

5 Q. As -- so it was during an in-person
6 conversation as opposed to conducting research, for
7 example --

8 A. Right.

9 Q. -- on Google or something?

10 A. Right, right.

11 Q. Okay. So now, I believe you gave two reasons
12 why you took the Nutella away from your kids. One, that
13 it was not as nutritious as you thought and two, that it
14 might contain trans fat --

15 A. Right.

16 Q. -- correct?

17 A. Correct.

18 Q. Any other reasons?

19 A. And -- and that's when I realized how much
20 sugar it had in it, too. And I spend more on Nutella
21 than I do on a regular peanut butter. There's no reason.
22 It has no extra nutritional value for my kids. There's
23 no reason for me to -- to have that. I bought it because
24 I thought it would be better nutritionally, and it's not.

25 Q. So again, my question is just was there any

1 other reason you took it away from your kids?

2 A. No.

3 Q. It wasn't because a lawyer told you to?

4 A. I don't think Ron told me to at that point.

5 MR. MARRON: Yeah, just object on
6 attorney-client privilege. You know that question's
7 improper and I instruct my client not to discuss or to
8 reveal any communications between us; between you as my
9 client, me as the attorney. It's not the proper subject
10 of questioning here today.

11 BY MR. BISH:

12 Q. Yeah. So just to be clear, if I ask you about
13 what Mr. Marron told you, Mr. Marron's going to make an
14 objection on attorney-client privilege, I assume.

15 MR. BISH: Is that correct?

16 MR. MARRON: Uh-huh.

17 MR. BISH: "Yes"?

18 MR. MARRON: Yes.

19 BY MR. BISH:

20 Q. Would you follow that instruction not to answer
21 the question?

22 A. Sure. Yes.

23 Q. Yes, okay.

24 So I just want to -- to save us time, I'm not
25 going to ask questions about what Mr. Marron told you

1 because I understand counsel will object.

2 MR. BISH: Is that correct?

3 MR. MARRON: Correct.

4 BY MR. BISH:

5 Q. And you're going to follow that instruction,
6 correct?

7 A. Correct.

8 Q. So I'm not going to -- I'm not going to go
9 there based on that understanding.

10 A. Okay.

11 Q. So now let's talk about the first reason that
12 you took Nutella away from your kids; that it wasn't as
13 nutritious as you thought it was.

14 Do your kids eat things that are less
15 nutritious than Nutella?

16 A. Yes.

17 Q. Have you taken those products away from them?

18 A. No.

19 Q. Why not?

20 A. This they use as part of their breakfast. This
21 is not like a Twinkie after dinner. This is something
22 they eat for lunch, and it may be the only thing that
23 they would eat for lunch. I wouldn't give them a Twinkie
24 to eat for lunch or for breakfast and have that be the
25 only thing that they have besides a piece of fruit and a

1 Twinkie. This is protein, it is part of a meal, in my
2 opinion. And I'm not a nutritionist, I don't know, but I
3 think it's important as part of a meal. So I was giving
4 Nutella as a hazelnut spread to my kids.

5 Q. And I understand that.

6 Is there any reason your kids can't eat it as a
7 dessert?

8 A. No, no. And you know what, if I wasn't so
9 angry with you guys for advertising it the way that you
10 did, they would be eating it as a dessert.

11 Q. You're not talking to me, are you?

12 A. Well, to the company, because they really do
13 like it. And I wouldn't have a problem with them eating
14 it after dinner on a -- one of their favorite desserts
15 for after dinner is peanut butter hot dog bun with a
16 banana in it; it's a hot dog bun with peanut butter and a
17 big banana like a hot dog, and they would love it with
18 Nutella.

19 But I'm upset that they advertise it -- I
20 presented it as part of a balanced meal to my kids
21 because that's what the advertising led me to believe it
22 was. So probably more upset as feeling duped by them
23 that I took it away from my kids. I wouldn't mind if
24 they put it over ice cream after they ate their
25 vegetables and meat and their dinner, but I wouldn't want

1 them to have it just for breakfast.

2 Q. Okay.

3 A. Maybe along with a -- along with a turkey and
4 cheese sandwich at lunch to dip apples in, that would
5 probably be -- I would be okay with that. But that's not
6 why I bought it. And I feel like the reason that I
7 bought it is because it was advertised to me to be
8 wholesome, nutritious, balanced, part of a breakfast, not
9 a snack. It wasn't advertised like Cheetos are
10 advertised. I know what I'm buying when I'm buying
11 Cheetos. I actually feel a little bit guilty when I give
12 them to my kids.

13 Q. So if you'd never seen an advertisement, and
14 your kids came home from having it at their friend's
15 house and said mom, I really like this product, and you'd
16 bought it because they wanted it, you would have no
17 problem giving it to them for dessert because you
18 wouldn't be angry, for example?

19 A. Probably, yeah. I don't think I would -- I
20 bought, like, caramel for my kids to dip apples in. And
21 I know caramel's not good for you, but I don't give it to
22 them as -- like I would a hard boiled egg. I was giving
23 them Nutella as part of a balanced meal. I wasn't giving
24 it to them as a dessert, as an in between meal snacks. I
25 was giving it to them as part of their meal. Which, to

1 me, is -- and I don't know if everybody feels the same
2 way, but I know a lot of my friends who are parents do
3 the same thing. You're not having dessert until after
4 you've finished your vegetables. I've been in enough
5 households with moms and kids that I know that's not
6 unusual.

7 Q. But you'd agree that's a personal choice,
8 right?

9 A. Yes.

10 Q. Some -- some families do different things,
11 right?

12 MR. MARRON: Yeah, objection. I'd caution my
13 client not to engage in speculation. This calls for
14 expert opinion, maybe somebody take a survey or
15 something, and she's not qualified to say what other
16 people do.

17 MR. BISH: She brought it up.

18 MR. MARRON: I understand. That's my
19 objection. We're standing by it.

20 You don't have to answer that question.

21 MR. BISH: Is there an instruction there?

22 MR. MARRON: I think it's argumentative at this
23 point.

24 BY MR. BISH:

25 Q. Can you answer that question, sorry?

1 MR. MARRON: Can you rephrase it?

2 BY MR. BISH:

3 Q. In your experience, do other families do
4 different things?

5 MR. MARRON: Same objection.

6 THE WITNESS: Different things as far as what
7 kind of different things?

8 BY MR. BISH:

9 Q. In terms of --

10 A. Like celebrate Kwanzaa instead of Christmas,
11 sure.

12 Q. No. In terms of like when they give their kids
13 sugary, sweet --

14 A. In my experience?

15 Q. Yeah.

16 A. In my experience, it's as a dessert, it's after
17 a meal. I haven't met -- I can't recall meeting anybody
18 that would give their kids a Twinkie for dinner. I might
19 have, but I can't recall anybody that I know that would
20 do that.

21 Q. Now, do you believe that Nutella on Milton's
22 toast would have the same nutritional characteristics as
23 a Twinkie?

24 MR. MARRON: Objection; form, calls for an
25 expert opinion.

1 THE WITNESS: Can I answer that?

2 MR. MARRON: Sure.

3 THE WITNESS: I believe it's equivalent. In my
4 opinion, it seems like it has as much sugar, it has as
5 much nutritional value.

6 BY MR. BISH:

7 Q. As a --

8 A. I think it would be in the same category as a
9 candy bar or a Twinkie.

10 Q. Do you think a Twinkie has three grams of
11 protein?

12 MR. MARRON: Objection; argumentative.

13 You can answer if you know.

14 THE WITNESS: I don't know.

15 BY MR. BISH:

16 Q. Do you think a Twinkie has a gram of fiber?

17 A. I think --

18 THE REPORTER: "A"?

19 MR. BISH: A, one.

20 THE WITNESS: I think it might.

21 BY MR. BISH:

22 Q. So turning back to Defendant's Exhibit 8.

23 So on that same day that you bought Nutella a
24 second time, it appears that you also bought 2 percent
25 milk, Tropicana Orange Juice, Milton's, right?

1 A. Yes.

2 Q. Okay. Sounds an awful lot like the picture on
3 the back of the Nutella, right?

4 A. It does a little bit, yeah. There's even some
5 grapes on there, I think.

6 Q. Now, in your opinion, is that a balanced
7 breakfast?

8 A. No.

9 Q. Why not?

10 A. Because of the Nutella on the bread. I think
11 there should be a protein there.

12 Q. How much protein is in Milton's?

13 A. I don't know.

14 Q. How much protein is in Nutella?

15 A. I don't know.

16 Q. It's on the label, though, right?

17 A. Yeah. I've -- I've seen it, I just can't
18 recall.

19 Q. So you could -- if you wanted to, you could
20 figure out how much protein --

21 A. Yes, of course.

22 Q. -- would be in -- if you put Nutella on
23 Milton's, you could figure out how much protein was in
24 it?

25 A. Had I looked at this prior, yes. That, to me,

1 looks like a balanced breakfast. But now that I know
2 Nutella is half sugar and palm oil, I don't -- wouldn't
3 consider that a good breakfast.

4 MR. MARRON: And by that are you referring to
5 the label, just for the --

6 THE WITNESS: Right.

7 MR. MARRON: -- benefit of the record?

8 THE WITNESS: Right. Like, prior to this,
9 that, to me, would have liked look a balanced breakfast.

10 BY MR. BISH:

11 Q. So by adding Nutella?

12 A. Knowing what I know now.

13 Q. It's because of the sugar, correct?

14 A. The sugar and the palm oil yes.

15 Q. And the palm oil.

16 A. The -- what I see, when I thought that there
17 was trans fat in it, somebody had said that, I did -- I
18 did look. And it didn't -- it said it didn't have
19 trans fat. But it has a palm oil, which I don't think is
20 good for you.

21 Q. Because of trans fat?

22 A. No. No, not because of trans fat. I mean, I
23 was looking for that but it didn't, it didn't indicate
24 that it had that in there, right. But I seen the palm
25 oil at that time when I took a closer look. That's when

1 I seen sugar's the first ingredient, too. I took a
2 closer look.

3 Q. What's your impression of palm oil?

4 A. That it's not good for you.

5 Q. And why is that?

6 A. Have no idea.

7 Q. Have you ever done any research to see if there
8 are any positive attributes of palm oil?

9 MR. MARRON: Yeah, I'd like to -- I'd like to
10 object on attorney-client privilege.

11 If there's anything that you've learned about
12 the product or about the contents or about palm oil from
13 your attorneys, I'll instruct my client not to -- not to
14 answer the question if it reveals any communications with
15 her lawyer. But if you have an independent knowledge
16 of -- of why palm oil's not good for you, then you can
17 answer.

18 THE WITNESS: I'm not going to answer.

19 BY MR. BISH:

20 Q. So everything you know about palm oil came from
21 an attorney?

22 A. Everything that I know about it, yeah. Other
23 than the general impression that it's not good for you, I
24 knew that prior.

25 Q. And where did that general impression come

1 from?

2 A. Statements in advertising, like sodas versus
3 juice. Advertising for like Canola oil versus other oil.
4 Advertisings for -- mostly other advertisements for other
5 products. Like the commercial about fructose corn syrup.

6 Q. Those discuss palm oil specifically?

7 A. No. I'm just giving you an example. I
8 couldn't specifically tell you the commercial for that
9 either, but it gives me the impression that it's not good
10 for you.

11 Q. So based on advertisements for other oils you
12 have the impression that palm oil --

13 A. Yes.

14 Q. -- is not good for you?

15 A. Yes.

16 Q. What other oils aren't good for you in your
17 opinion?

18 A. I don't think Canola oil is very good for you.

19 Q. Anything else?

20 A. Corn oil I don't think is good for you.

21 Q. Anything else?

22 A. No.

23 Q. Peanut oil?

24 A. I'm not sure.

25 Q. No impression of peanut oil?

1 MR. MARRON: Yeah, I'd just like to object
2 along this line of questioning. It calls for an expert
3 opinion, nutritionist opinion, and my client's not a
4 nutritionist.

5 BY MR. BISH:

6 Q. I'm asking if you have any personal impression
7 of peanut oil; good, bad or indifferent?

8 A. The only thing I think of when you say peanut
9 oil is frying a turkey.

10 Q. Is that a good or a bad thing?

11 A. I don't know, I've never done it. I've heard
12 of people doing it, though.

13 Q. Okay. Back on Defendant's Exhibit 8.

14 It also looks like you, on that day, bought
15 almonds, Ghiradelli triple chocolate brownies, 32 cans of
16 Dr. Pepper, two jugs of Skipppy, pulled pork, demi
17 baguettes --

18 THE REPORTER: I'm sorry, what?

19 MR. BISH: Demi baguettes.

20 Q. -- fresh fryer thighs, scalloped potatoes,
21 manicotti with sauce, and last but not least, the jumbo
22 pack of Twinkies; is that right?

23 A. Yes.

24 Q. Which of those were for West Coast Kitchen?

25 A. Where -- on just this page, um...

1 MR. MARRON: Do you have an independent
2 recollection? I mean, do you know, do you recall?

3 THE WITNESS: I'm looking at the date, and I
4 can't recall exactly, but I know that was our grand
5 opening at the end of that month. So I was buying a lot
6 of things I normally wouldn't buy. The brownies would
7 have been for the shop, for sure. That's what we make
8 there. The milk was for the shop -- oh, that's down
9 further. Wait a minute.

10 Manicotti with sauce, that was probably for
11 home. We don't sell that. The scalloped potatoes was
12 probably for home. The grapes were probably for home.
13 The Nutella was for home. The chicken was for home. I
14 use breasts at the shop, not thighs. The Twinkies were
15 for home.

16 I'm going to say the baguettes were for the
17 shop. I couldn't imagine what I was doing at home with
18 those. January. I don't know what I would have been
19 doing with them at the shop either. I'm going to say
20 those were probably for the shop.

21 How much is the pulled pork? 16.32. That was
22 probably for home; that wouldn't be enough for the shop.
23 The Skippy peanut butter was for the shop. The
24 Dr. Pepper was for the shop. The brownie mix was for the
25 shop. The pickles were for the shop. Almonds were for

1 the shop. Avocados were for the shop. Milton's bread
2 was probably -- could have been either; I use it at home
3 and at the shop. Bananas could have been either; I use
4 them at home and at the shop. Tropicana was for --

5 THE REPORTER: I'm sorry, can you slow down.
6 After "bananas"?

7 THE WITNESS: I'm sorry. Bananas could have
8 been either. Tropicana would have been for the shop.
9 Water could have been either.

10 MR. BISH: Okay. We're going to have to change
11 the tapes real quick, so...

12 THE VIDEOGRAPHER: Okay. This concludes media
13 number 1, Volume I, in the deposition of Laura
14 Rude-Barbato. We're off the record at 12:21 p.m.

15 (Recess from 12:21 p.m. to 12:25 p.m.)

16 THE VIDEOGRAPHER: This is the start of media
17 number 2, Volume I, in the deposition of Laura
18 Rude-Barbato. We're on the record at 12:25 p.m.

19 BY MR. BISH:

20 Q. Ms. Barbato, before we changed the tape you
21 were going through the list of --

22 A. Right.

23 Q. -- your purchases on January 20th.

24 A. I notice that I did them in two separate
25 transactions, so that would be pretty easy to tell.

1 Transaction 99 would have been for the shop and then
2 transaction under 100 would have been for home.

3 Q. I see. That's very helpful.

4 A. I do try to separate them in separate
5 transactions.

6 MR. MARRON: Can you show me where that is?

7 THE WITNESS: Right here (indicating).

8 Transaction 99 was for the shop.

9 MR. MARRON: Oh, I got you.

10 THE WITNESS: And then transaction 100. They
11 were separate transactions.

12 MR. MARRON: Ah, thank you.

13 BY MR. BISH:

14 Q. Let's talk first about the purchases for the
15 shop --

16 A. Okay.

17 Q. -- for transaction 99.

18 Do you look at the nutritional facts panel for
19 products you were buying for the shop?

20 A. No.

21 Q. Do you look at the ingredient list for the
22 products that you're buying for the shop?

23 A. Not -- not in general, not as a rule.

24 Q. Ever?

25 A. I know I've taken a look at them before. But I

1 don't generally do that when I'm purchasing, no.

2 Q. What -- when have you, what do you recall about
3 that?

4 A. I'm sorry about --

5 MR. MARRON: Objection as to form.

6 BY MR. BISH:

7 Q. When you say "I know I've taken a look at them
8 before"?

9 A. Like if I've been on like a low carbohydrate
10 diet. My husband and I went on like that no carb diet a
11 few years ago, and so I would look at labels to see
12 carbohydrates in it. Maybe if I'm trying to watch my
13 weight I might look at the calorie content. A little
14 worried about my bones, I might look for a calcium in
15 something.

16 Q. That sounds, to me, like when you were looking
17 for personal food, though, correct?

18 A. Right.

19 Q. Now, do you -- have you ever looked at the
20 nutritional facts panel for the products you're buying
21 for the West Coast Kitchen?

22 A. No. We pretty much took over that menu. It
23 was an existing business and we maintained most of the
24 items on the menu.

25 Q. For example, the Ghiradelli triple chocolate

1 brownies, have you ever looked at the nutrition facts
2 panel for that product?

3 A. No.

4 Q. Ever looked at the ingredients?

5 A. No.

6 Q. Doesn't matter to you?

7 A. Those were an item that was carried by the shop
8 prior to purchase that all the customers loved, so we
9 kept them. Same with the peanut butter cookie, that was
10 not my recipe. Same with the crumb cake, that was not my
11 recipe. Those were items that were sellers already in
12 the shop. We didn't want to change the menu too much and
13 lose customers. It already had a pretty good customer
14 data and we didn't want to do too much changes to lose
15 those customers. I had never made Ghiradelli's brownies
16 prior to the purchase of the shop.

17 Q. Okay. If you could turn to page 9 of
18 Defendant's Exhibit 8. You see that it looks like you
19 returned to Costco on the 17th of January, correct?

20 A. Okay.

21 Q. You with me?

22 A. Yeah.

23 Q. And do you agree that it looks like you
24 returned to Costco on the 17th of January?

25 A. Yes, it does.

1 Q. And again, I now see that there are two
2 transaction numbers. Same thing, one was for the
3 kitchen, one was for home, correct?

4 A. Yes -- on the 17th?

5 Q. Yes.

6 A. Okay. 157 and 158, yes.

7 Q. Can you tell me, was 157 for the shop?

8 A. Yes.

9 Q. 158 was for home?

10 A. I'm finding that hard to believe that that was
11 my purchase because I don't drink Diet Pepsi. Nobody in
12 my family does.

13 Q. They drink any sodas?

14 A. My husband likes Diet Coke. I would never buy
15 him Diet Pepsi.

16 Q. Brand preference or taste?

17 A. Huh?

18 Q. Is it a brand preference?

19 A. It's just what he drinks. He doesn't like Diet
20 Pepsi. I wouldn't buy Diet Pepsi. Is it possible that
21 this was Shawna or Joanne?

22 Q. You're asking me?

23 A. Yeah, I don't -- I mean, are our card numbers
24 like linked or?

25 Q. I think I know about as much as you do.

1 MR. MARRON: I'll instruct my client rather
2 than to speculate or use conjecture, to only talk, you
3 know, state things that you have personal knowledge of.

4 Is there a question pending?

5 BY MR. BISH:

6 Q. I believe the general question is whether or
7 not we can tell if transaction 157 was for the shop or
8 for home.

9 A. 157 was for the shop. I notice those are
10 items -- Splenda I would not buy for the home. But I
11 believe transaction 158 was not myself personally.

12 Q. Okay.

13 A. And only -- the only thing that makes me
14 believe that is Diet Pepsi, I would not buy Diet Pepsi.

15 Q. What about the Hostess Cupcakes?

16 A. I probably would buy those. But given that I
17 was just there the week before and bought the Twinkies, I
18 don't think I would do that again, right that soon
19 because those are really big box of Twinkies. And I
20 wouldn't buy like the roast tri-tip at -- I -- I really
21 don't. I think I let Joanne use my card or somebody use
22 my card to go for that. And I wouldn't buy this wheat
23 bread. I...

24 Q. All right. You can go ahead and put that to
25 the side.

1 MR. MARRON: Are you done with this exhibit?

2 MR. BISH: Yeah.

3 THE WITNESS: Do I still need this one
4 (indicating)?

5 BY MR. BISH:

6 Q. If you want, I can hang on to it for you.

7 A. Okay.

8 MR. MARRON: It's 12:33 right now. What time
9 did they say they had.

10 THE WITNESS: 12:45.

11 MR. MARRON: Is that when you wanted to break,
12 at 12:45? Okay.

13 BY MR. BISH:

14 Q. Ms. Barbato, I'm going to hand you what was
15 previously marked as Defendant's Exhibit 1.

16 MR. MARRON: Thank you, sir.

17 BY MR. BISH:

18 Q. First question: Have you seen Defendant's
19 Exhibit 1 before?

20 A. Yes.

21 Q. Can you -- what do you believe it to be?

22 A. An advertisement for Nutella.

23 Q. When is the first time you saw this
24 advertisement?

25 A. I can't be certain.

1 Q. What's your -- what's your best recollection?

2 A. I don't know.

3 Q. Before or after the lawsuit was filed?

4 A. I don't know.

5 MR. MARRON: Objection to form.

6 BY MR. BISH:

7 Q. Did you provide this document to your counsel?

8 A. No.

9 Q. Did you provide any documents to your counsel
10 in connection with this lawsuit?

11 A. No.

12 Q. Just the Nutella jars?

13 A. Right.

14 Q. Nothing else?

15 A. No.

16 Q. So I asked when you saw the advertisement, and
17 you don't recall.

18 Do you recall where you saw it?

19 A. Not specifically. I seen an advertisement on
20 TV several times, and in a magazine. I'm not sure
21 exactly which one. I would say like Parents magazine or
22 Family magazine. I have magazines that come to my house.
23 I guess we could research like what magazines I got in
24 2009, 2010 to figure it out.

25 Q. Let's talk about this. Do you subscribe to

1 Parents magazine?

2 A. I don't know if it's in my name or my dad's
3 name, but it does come to my house in the mail.

4 Q. And it has for how long?

5 A. I would say since 2007.

6 Q. What about, do you -- and do you read Parents
7 magazine?

8 A. I thumb through it, read some. Not always.

9 Q. And then you mentioned Family magazine?

10 A. Right.

11 Q. And do you have a subscription to Family
12 magazine?

13 A. I don't think so. I don't think that one comes
14 in the mail. It might, though. It might. It might
15 have. My dad was one of those kind of like bought
16 magazine subscriptions. I still get Maxim from before he
17 died. So I had tons of magazines coming to my house, and
18 I use them for the coffee shop.

19 Q. Do you read Family magazine?

20 A. Sometimes. Occasionally an article here and
21 there. Not cover to cover, no.

22 Q. So sitting here today, you don't recall if you
23 saw this advertisement before or after the lawsuit was
24 filed?

25 A. I can't specifically say when I saw it, and I

1 believe it was before I even purchased Nutella. But I
2 can't give you a specific date or if it was this even
3 specific advertisement.

4 Q. Okay. So let's look at the -- looking at
5 the -- at the picture on the top half of Defendant's
6 Exhibit 1, do you have any objection to the picture
7 itself?

8 A. I think it's a little misleading.

9 Q. In what way?

10 A. In that it looks like she's feeding breakfast
11 to her kids and that would be part of a nutritious
12 breakfast. A wholesome breakfast. She's got fruit in
13 the bowl there. Milk, juice on the table. They're
14 sitting down, it's on plates. Looks like it's a
15 breakfast time setting. And I don't -- and I don't
16 believe it's a nutritious breakfast for a child.

17 Q. So let's -- specifically, do you have any
18 objection to Ferrero showing Nutella on whole wheat
19 toast?

20 A. No. Objection to it in this as part of
21 breakfast and that you'll want to serve. I think -- I
22 take -- I take offense to that, that you'll want to
23 serve. I want to give my kids things that are healthy
24 and good for them. I don't want to give them -- I don't
25 like them to eat Twinkies. I don't want them to eat

1 fruit snacks. They want those things. They ask for
2 those things. They beg for those things. I occasionally
3 let them have those things. But I wouldn't give it to
4 them as breakfast. That's what I find offensive about
5 it, is that it's presented to me, it gives me the
6 impression that this is a wholesome breakfast for my
7 kids, and I don't believe it is.

8 Q. Okay.

9 A. I believe this is something that they could
10 have after dinner or maybe after they've eaten some eggs
11 and whole wheat toast and fruit.

12 Q. So if it was -- if the ad was -- if it was dark
13 outside, would you have an objection?

14 A. And they had a bowl of popcorn and they were
15 sitting in front of the TV, perfect. That would be a
16 good commercial for it, I believe.

17 Q. So if it was dark outside, would you have an
18 objection to an ad showing --

19 A. Just that specific thing and just dark outside,
20 no. If it was like they're sitting around the TV with a
21 bowl of popcorn and a jar of Nutella, and they're dipping
22 their popcorn in it, I think that would be good. You
23 know, like a chocolate fountain, because I think that's
24 what it's equivalent to.

25 Q. Okay. So just let me finish my question.

1 So if it was dark outside, and they were around
2 the TV, would it be okay to have the Nutella on whole
3 wheat bread?

4 A. Sure.

5 Q. Okay. In that same scene, would you have an
6 objection to having fruit in the picture?

7 A. In that scene around the TV, having fruit in
8 the picture, I would assume it was plastic, so sure.

9 Q. You wouldn't have an objection?

10 A. No.

11 Q. Okay. And would you have an objection to
12 showing kids drinking orange juice?

13 MR. MARRON: Objection; form, incomplete
14 hypothetical.

15 You can answer the question.

16 THE WITNESS: No. My kids don't like orange
17 juice, but whatever.

18 BY MR. BISH:

19 Q. Personal preference.

20 Would you have an objection to them showing
21 kids drinking milk?

22 A. No.

23 Q. Okay. Okay. You can put -- actually, let's --
24 let's talk about you -- you brought up the words, so
25 let's talk about the words.

1 So let's -- looking at the first line:
2 Nutella for a breakfast they'll want to
3 eat.

4 That's true, correct?

5 A. Right.

6 Q. Your kids wants to eat Nutella, right?

7 A. Yes, they do.

8 Q. Nothing deceptive about that?

9 A. Nothing.

10 Q. Next line:

11 And you'll want to serve.

12 That's where you have your objection, correct?

13 A. Right.

14 Q. And why is that?

15 A. Well, because saying I want to serve it to them
16 is like saying I'm -- I like what I'm giving them. I
17 want them to have it. I don't really want them to eat
18 Cheetos and Twinkies and -- you know, what I'm saying,
19 and especially not for breakfast.

20 Q. Okay.

21 A. I let them have these things, but I make sure
22 that they've had balanced meals in between.

23 Q. Okay. So let's go to the next line:

24 Adding Nutella to your family's
25 breakfast can make mornings a whole lot easier.

1 You see that?

2 A. Yes.

3 Q. You'd agree with that, right?

4 A. Yes.

5 Q. There are mornings where it's hard to get some
6 of your kids to eat breakfast because they're running
7 out?

8 A. Yeah. The schedules are -- yeah, it's
9 difficult, we're rushing.

10 MR. MARRON: Objection; form, incomplete
11 hypothetical.

12 BY MR. BISH:

13 Q. Nothing deceptive about that, right?

14 A. No -- except -- well, "family's breakfast," I
15 mean, it's saying like it's part of a breakfast, it's not
16 a snack. So I think that is kind of deceptive. They're
17 clearly saying it's part of your family's breakfast as
18 part of like -- like if you were to give them an egg and
19 a piece of toast. It's definitely not -- the same.

20 Q. So that line's saying "adding Nutella to your
21 family's breakfast can make mornings a lot easier,"
22 right?

23 A. I find it -- I find that they're saying
24 family's breakfast as part of the family's breakfast
25 because they're saying adding Nutella to a breakfast.

1 Q. That --

2 A. It's better, but it can be deceptive. I mean,
3 you really have to sit there and kind of think about the
4 wording. And I don't think most people do that when
5 they're looking at an ad, sit there and analyze
6 everything that it's saying. You get a general
7 impression and that's what you go off of -- I go off of.

8 Q. Next line:

9 That's because Nutella is a delicious
10 hazelnut spread your kids will love.
11 Agree with that?

12 A. No.

13 Q. Okay.

14 A. It's -- I don't believe you should call it a
15 hazelnut spread.

16 Q. Okay. And why is that?

17 A. Because the hazelnut I don't believe is one of
18 the main ingredients.

19 Q. And that was ability -- in your --

20 A. In my opinion, it should be close to half of
21 the entire thing, or the first or second ingredient in it
22 should be -- if you're saying that it's a Nutella (sic)
23 spread, it should be made with mostly hazelnut. Hazelnut
24 spread should be made with mostly hazelnuts.

25 Q. What if it tasted like hazelnuts?

1 A. Well, then say a spread that tastes like
2 hazelnut or hazelnut flavored spread.

3 Q. Okay.

4 A. I understand that, hazelnut flavoring. I
5 understand. We have hazelnut Torani at our shop. I know
6 that's not real hazelnuts. It's flavor. It says
7 hazelnut flavor.

8 Q. But if these are, in fact, real hazelnuts and
9 it's not an artificial flavor?

10 A. But it's not the main ingredient in it. It's
11 not listed as one or two. It's not -- I mean, it gives
12 you the impression that it's mostly hazelnuts, and I
13 don't believe it is.

14 Q. So if it said -- I believe you just said if it
15 said hazelnut flavored spread you --

16 A. I think that would be less deceptive, yes.

17 Q. Okay.

18 A. But I don't think -- I don't know that it
19 tastes like hazelnut. I never tasted it.

20 Q. You never tasted it, right.

21 Next line:

22 Each jar contains hazelnuts, skim milk
23 and a hint of cocoa.

24 I think we talked about that already, right, no
25 option to saying what's in the product?

1 A. But here you list hazelnut first. How can you
2 do that?

3 Q. Well, if there are more -- if there are more
4 hazelnuts than skim milk --

5 A. But that gives me the impression, yeah, that
6 hazelnut is like more -- there's more hazelnuts than
7 anything else in there. If you list that first, to me,
8 and I don't -- you know, like I said, I'm not a
9 professional. But when I say see that, I'm thinking
10 hazelnut is the main ingredient. That's most of what's
11 in this. It's mostly just hazelnuts and whatever to make
12 it creamy.

13 Q. Now, if you wanted --

14 A. Is my impression.

15 Q. Now, if you wanted to find out if that was, in
16 fact, true, what would you do?

17 A. Look at the -- look at the ingredients on it.

18 Q. So you could have done that, correct?

19 A. Could have done that.

20 Q. But you --

21 A. But I relied on the advertising that I seen.

22 Q. You chose not to?

23 A. I chose not to.

24 Q. Next line:

25 Spread it on multi grain toast or even

1 whole wheat waffles and add a glass of milk and
2 a serving of fruit and turn a balanced
3 breakfast into a tasty one too.

4 Do you think it's, in general, a good idea for
5 Ferrero to encourage moms to give their kids multi grain
6 toast and --

7 A. Whole wheat waffles.

8 Q. Yeah, is that a good idea?

9 A. Yeah.

10 Q. Okay. "Nutella...Breakfast never tasted this
11 good."

12 Any problem with that?

13 MR. MARRON: Objection; misstates the evidence.
14 You forgot the word "balanced."

15 MR. BISH: No, I'm looking below that.

16 THE WITNESS: "A balanced breakfast into a
17 tasty one too."

18 BY MR. BISH:

19 Q. Sorry. I'm looking at -- I've moved on to the
20 next line, "Nutella..." --

21 MR. MARRON: I see.

22 BY MR. BISH:

23 Q. -- "Breakfast never tasted this good."

24 A. What -- where -- are we back at balanced
25 breakfast?

1 Q. No. I'm asking about the "Nutella...Breakfast
2 never tasted this good," do you have a problem with that
3 slogan?

4 A. I don't like the fact that it says breakfast in
5 it. I think you could -- I think you could put it
6 better, like spruce up your breakfast with Nutella. Or,
7 I don't know, like it's -- I think you guys should
8 advertise it more as like a syrup or a snack than -- you
9 know what I mean? I don't think Aunt Jemima claims to be
10 wholesome or -- you know, I never got that impression
11 that that's really good for my kids. This gave me the
12 impression it was good for my kids.

13 Q. Okay. Okay. We are at 12:45. Shall we?

14 MR. MARRON: Yeah. Let's go off the record,
15 please. Thank you.

16 THE VIDEOGRAPHER: Okay. All agreed to go off
17 the record, we're off the record at 12:47 p.m.

18 (At 12:47 P.M., the deposition of LAURA RUDE-BARBATO was
19 adjourned for noon recess.)

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1 SAN DIEGO, CALIFORNIA, FRIDAY, SEPTEMBER 30TH, 2011

2 1:35 P.M.

3
4 THE VIDEOGRAPHER: We're back on record at
5 1:34 p.m. -- 1:35 p.m.

6
7 EXAMINATION

8 BY MR. BISH:

9 Q. Ms. Barbato, have you ever been involved in a
10 lawsuit before?

11 A. I don't think so.

12 Q. Have you ever sought to act as a lead plaintiff
13 before?

14 MR. MARRON: Is that another name for class
15 representative?

16 MR. BISH: Right.

17 THE WITNESS: No.

18 BY MR. BISH:

19 Q. Have you ever participated in a class action
20 before?

21 A. No.

22 Q. How many hours have you devoted to overseeing
23 this lawsuit?

24 A. I would say between 30 and 40.

25 Q. Have you discussed this lawsuit with anybody

1 other than your lawyer?

2 A. My partners know that I'm here.

3 Q. Not just today, I mean the lawsuit generally.

4 A. No.

5 Q. Nobody's asked you why?

6 A. It doesn't really come up in conversation, no.

7 Q. Okay. Have you ever met Ms. Hohenberg?

8 A. I have.

9 Q. When was that?

10 A. I think in November of 2010.

11 Q. Where'd you meet her?

12 A. At West Coast Cafe.

13 Q. Does she go there frequently?

14 A. No. She was friends with a previous
15 employer -- employee of the previous owner.

16 Q. And who was that?

17 A. Her name is BJ.

18 Q. Is -- does BJ have a last name?

19 A. I don't know it.

20 Q. Okay. How many times have you seen
21 Ms. Hohenberg in person?

22 A. Maybe three times.

23 Q. And have you talked to her?

24 A. I don't recall talking to her, no. I was
25 introduced to her. That was probably the only time I've

1 talked to her.

2 Q. By BJ?

3 A. No. By Mike, the former owner.

4 Q. Oh, by Mike.

5 And what's Mike's last name?

6 A. I don't know.

7 Q. Okay.

8 A. Mike Bishodo (phonetic), or something like
9 that. I don't know.

10 Q. Have you ever talked to Ms. Hohenberg about
11 this lawsuit?

12 A. No.

13 Q. Have you read -- strike that.

14 We talked earlier about the complaints that
15 have been filed on your behalf, correct?

16 A. Correct.

17 Q. And we looked at one of them, right?

18 A. Right.

19 Q. Are you aware that Ferrero moved to dismiss one
20 of the complaints that was filed on your behalf?

21 A. Yes.

22 Q. And do you recall if you opposed that motion?

23 A. Yeah, I opposed that motion.

24 Q. You do recall that you did?

25 A. Well, I recall thinking that's not what we want

1 to happen.

2 Q. Okay. Did you review an opposition brief
3 regarding that motion to dismiss?

4 A. I don't recall.

5 Q. So do you recall approving the filing of an
6 opposition brief on your behalf?

7 A. I don't recall.

8 Q. Okay. Are you aware that the parties have
9 scheduled a mediation in this action?

10 A. No.

11 MR. MARRON: Objection --

12 THE WITNESS: I'm not sure. I might have been
13 told that. I'm not sure.

14 MR. MARRON: It's also known as an ENE.

15 MR. BISH: No, I'm not talking about an ENE.
16 I'm talking about a mediation.

17 MR. MARRON: Oh.

18 BY MR. BISH:

19 Q. No?

20 A. No. I might have been told that. I don't
21 remember.

22 Q. Did you intend to physically attend a
23 mediation?

24 A. If I'm asked to, I will.

25 Q. But had you -- had you intended to -- okay.

1 You don't recall you've been told about a mediation, so
2 you don't recall --

3 A. Huh-uh, no.

4 Q. Okay. What did you do to prepare for today's
5 deposition?

6 A. I read the complaints.

7 Q. What else?

8 A. Got this jar down from the top of my cupboard.
9 I looked for old magazines at my house. I looked for
10 receipts at my house. I looked for handouts given of the
11 food pyramid in the letter that the water polo coach gave
12 us about new nutritional guidelines for the players. I
13 looked for some supporting documents that they had asked
14 me to look for.

15 Q. Were you able to find the food pyramid?

16 A. I think I found a food pyramid from [REDACTED] from
17 in kindergarten, but it was in his art book and I'm
18 keeping that.

19 Q. What about the guidelines?

20 A. Like given out from the water polo as far as
21 like how they should eat, I couldn't find those. I
22 probably threw them out.

23 Q. Did you meet with your lawyers to prepare for
24 today's deposition?

25 A. Prior to today --

1 Q. Yes.

2 A. -- no.

3 Q. What about --

4 A. We tried to but it didn't work out.

5 Q. It didn't work out.

6 What about this morning?

7 A. Yes. I met him at his office and we drove here
8 together.

9 Q. What time did you meet -- when you say "him,"
10 you're referring to Mr. Marron?

11 A. Yes.

12 Q. What time did you meet Mr. Marron this morning?

13 A. I probably got there about ten to 9:00 -- or,
14 I'm sorry -- yeah, maybe -- between 8:30 and 9:00.

15 Q. Okay. So going back to the advertising, I
16 believe I read somewhere that you saw an ad for Nutella
17 in June 2009; is that correct?

18 A. I don't remember.

19 Q. Do you recall --

20 A. I don't remember like the first time I saw an
21 ad. I remember seeing them, but I don't know exactly
22 when it was.

23 Q. Do you recall a little over a month ago that
24 Ferrero asked a series of questions of you called
25 interrogatories?

1 A. No.

2 MR. BISH: I'm going to hand to the reporter to
3 mark as Defendant's Exhibit No. 9.

4 (The document referred to was marked by
5 the CSR as Deposition Exhibit 9 for
6 identification and attached to the
7 deposition transcript hereto.)

8 BY MR. BISH:

9 Q. Feel free to take your time and review
10 Defendant's Exhibit 9, and just let me know when you've
11 had a chance to review it.

12 (Document reviewed by witness.)

13 THE WITNESS: Do you want me to review all ten
14 of them or one at a time?

15 BY MR. BISH:

16 Q. Why don't you just go ahead, and take your
17 time, and look over all of them.

18 A. (Witness complies.)

19 Okay.

20 Q. So if you look at response to interrogatory
21 No. 4, which is on page 7 of Defendant's Exhibit 9, about
22 half way down the page do you see where it says:

23 To the best of Plaintiff's recollection,
24 Plaintiff saw Nutella TV advertisements in or
25 around June of 2009.

1 You see that?

2 A. Yes.

3 Q. Where did that date come from?

4 A. That date probably came from when I was
5 thinking [REDACTED] would have been playing either baseball
6 with [REDACTED] or -- no, that would have been before that. So
7 I was thinking he started second grade with [REDACTED] at
8 Oneonta. So I know I had seen the commercial prior to
9 that for some time on TV. So it was probably derived
10 from knowing that I bought it when he started second
11 grade at Oneonta, which was sometime in July because they
12 go to year-round school, and knowing that I had seen the
13 commercial sometime before buying it.

14 Q. And where -- did you see it in San Diego?

15 A. I've seen it on TV, is my first recollection of
16 Nutella. I've seen that commercial on TV.

17 Q. While you were in San Diego?

18 A. Yeah.

19 Q. Okay. Do you recall what you were watching?

20 A. I don't. Generally at our house, like Channel
21 6 is the predominant. So maybe Fox or, you know, like
22 one of the -- I don't know. It could have been -- I
23 mean, it could have been on -- my kids could have been
24 watching that wrestling show too. I don't know.

25 Q. What's that wrestling show?

1 A. MMA, you know. Or Bully Beat Down. Or one of
2 those kind of things, you know.

3 Q. Do you recall what time of day you saw the
4 advertisement?

5 A. No.

6 Q. Evening or morning?

7 A. I don't remember.

8 Q. Do you watch daytime TV?

9 A. No.

10 Q. Ever?

11 A. Me personally, probably don't get to watch
12 anything I want to. I just glance at whatever they're
13 watching.

14 Q. So what -- what -- so you don't -- is there --
15 are there any TV shows that you watch yourself?

16 A. I like American Idol.

17 Q. Okay. Were you watching American Idol in 2009?

18 A. I don't remember.

19 Q. Okay. Anything else?

20 A. I can't remember exactly when I saw the
21 commercial or what channel it was on or what time of day
22 it was. I know I saw it more than once.

23 Q. And you know you saw it before July 2009?

24 A. Before -- the commercial before that?

25 Q. Yeah.

1 A. Possibly.

2 Q. I'm sorry. I thought that's what you -- I
3 thought you said you'd seen?

4 A. No. I think I started purchasing -- my first
5 purchase of Nutella, I believe, was in the summer of the
6 school year that started for the 2010-2011. My son is in
7 third grade now. So I bought it for him when he started
8 second grade great at Oneonta. And the reason I'm going
9 with that date is because he started school with Oneonta
10 with [REDACTED] where he first tried it at.

11 Q. Okay.

12 A. But he also played baseball with [REDACTED] the year
13 before. So I could be a little fuzzy on that. He had
14 been over to [REDACTED] house prior to starting school with
15 him.

16 Q. Okay. Now --

17 MR. MARRON: Just so we're clear, that was the
18 200 -- 2010 time frame?

19 THE WITNESS: Right, right.

20 MR. MARRON: Okay.

21 THE WITNESS: But I seen the commercial prior
22 to the purchase, for a long time. I didn't purchase it
23 until that year. So I don't know exactly how long it was
24 before I purchased it that I saw the commercial the first
25 time. I couldn't tell you. I couldn't be specific.

1 BY MR. BISH:

2 Q. Okay.

3 A. I believe it was around a year.

4 Q. Now, in the -- have you seen different versions
5 of the television advertisement for Nutella?

6 A. I might have seen different versions. The
7 general advertisement that I remember was a mom, three
8 kids. She's giving them Nutella on toast at a table.
9 They all seem very happy with it. I remember it saying
10 that the kids will like it and you'll feel good about
11 giving it to them, or something to that effect.

12 Q. Okay. Do you remember any other specific words
13 that were used in the television advertisement?

14 A. Part of a balanced breakfast.

15 Q. You recall the words "balanced breakfast"?

16 A. I believe so. And what specifically stands out
17 is that it said you'll feel good about giving your kids.

18 Q. Okay.

19 A. Or you can feel good, something to that effect.

20 Q. So you recall the words -- you think you recall
21 the words "balanced breakfast"?

22 A. I think it used the words "balanced breakfast."
23 I know for sure it said that I'm going to feel good about
24 giving it to my kids.

25 Q. Okay. So we've got two things so far.

1 Balanced breakfast is number one. Number two is you'll
2 feel good about giving it to your kids.

3 A. Right.

4 Q. Anything else you recall about the commercial?

5 A. I think the mom had blond hair.

6 Q. Blond hair.

7 A. I think there was a boy, maybe two. At least
8 one. They were young.

9 Q. Anything else you recall?

10 A. The table was in the middle of her kitchen.

11 Q. Wow. Okay, the middle of the kitchen.

12 A. I don't know anything -- I can't remember
13 anything else.

14 Q. No other words stand out to you?

15 A. Huh-uh.

16 Q. Any other images stand out to you?

17 A. No.

18 Q. And after the next break I'm going to show you
19 the TV ads. We can try to figure out --

20 A. Okay.

21 Q. Try to jog your memory about what you saw.

22 A. Okay.

23 Q. Now, on the side of the Nutella jar here, you
24 see where it says "visit us on the web at
25 NutellaUSA.com"?

1 A. (No audible response.)

2 Q. "Yes"?

3 A. Yes.

4 Q. Have you ever visited that website?

5 A. I don't think so.

6 Q. Have you ever heard of somebody named Connie
7 Evers?

8 A. Yes.

9 Q. Who is Ms. Evers?

10 A. I believe she's either a nutritionist or
11 pediatrician, something like that.

12 Q. And how did you come to learn about Ms. Evers?

13 A. From my attorney.

14 Q. So sometime after January 2011?

15 A. (No audible response.)

16 Q. "Yes"?

17 A. Yes.

18 Q. Ever meet Mrs. Evers?

19 A. No.

20 Q. Ever read an article written by Ms. Evers?

21 A. Possibly. I saw a picture of her in one of
22 the -- I think -- some of this paperwork that you guys
23 love so much, there might have been an article there.

24 Q. And when you say "you guys," you're referring
25 to lawyers, right?

1 A. All of you guys. All of you with your
2 paperwork.

3 Q. A process that only lawyers can love, right?

4 A. Yes.

5 Q. So aside from the documents you've read in
6 connection with the lawsuit, the legal papers, have you
7 ever read a statement by Ms. Evers?

8 A. No.

9 Q. Have you heard any statement made by Ms. Evers?

10 A. No.

11 MR. BISH: I'm going to mark as Defendant's
12 Exhibit No. 10.

13 (The document referred to was marked by
14 the CSR as Deposition Exhibit 10 for
15 identification and attached to the
16 deposition transcript hereto.)

17 BY MR. BISH:

18 Q. Ms. Barbato, have you ever seen Defendant's
19 Exhibit 10 before?

20 A. I believe so.

21 Q. When do you believe you saw it for the first
22 time?

23 A. I believe this was also in -- in some of this
24 paperwork, the complaint.

25 Q. Did you see this before you filed your lawsuit?

1 A. I might have seen this in a magazine. It looks
2 familiar, but I can't say if it's that or the paperwork
3 that I recently looked through.

4 Q. Okay.

5 MR. BISH: I'll mark as Defendant's Exhibit 11.

6 (The document referred to was marked by
7 the CSR as Deposition Exhibit 11 for
8 identification and attached to the
9 deposition transcript hereto.)

10 BY MR. BISH:

11 Q. Ms. Barbato, the reporter's handed you what
12 I've marked as Defendant's Exhibit 11. Same question,
13 have you seen this exhibit before today?

14 A. I don't know. I might have. I don't know.

15 Q. Maybe, maybe not.

16 A. Maybe, maybe not.

17 Q. Now, for either Defendant's Exhibit 10 or 11,
18 did you provide either of these documents to your lawyers
19 in this case?

20 A. No.

21 Q. No.

22 Let's talk about trans fat. You can put them
23 to the side if you want.

24 Are you aware that the Nutella sold in the
25 United States today does not contain partially

1 hydrogenated vegetable oil?

2 A. That it does not contain that?

3 Q. Correct.

4 A. No.

5 Q. You don't know that?

6 A. Well, it's not listed as one of your
7 ingredients. But I'm not there when they make it so I
8 can't say for sure. I mean, you know what I mean.

9 Q. Right.

10 A. If I trusted everything you guys said we
11 wouldn't be here.

12 Q. Now, do you know what partially hydrogenated
13 vegetable oil is?

14 A. Hydrogenated vegetable oil.

15 Q. Partially hydrogenated vegetable oil?

16 A. No.

17 Q. When you shop for foods, do you look to see if
18 a food has partially hydrogenated vegetable oil in it?

19 A. No.

20 MR. MARRON: She might know it better as trans
21 fat.

22 THE WITNESS: Yeah.

23 MR. BISH: Okay. You suggesting that those are
24 interchangeable terms?

25 MR. MARRON: Yes.

1 BY MR. BISH:

2 Q. Okay. So I'm going to use -- when I say -- I'm
3 just going to say PHVO for short and you'll understand
4 that I mean partially hydrogenated vegetable oil when I
5 say that?

6 A. Or trans fat?

7 Q. Is that how you --

8 A. I don't know. I don't know it as PH --

9 Q. Right.

10 A. I know what trans fat -- I know trans fat is
11 the margarine that I'm not allowed to have in my shop.
12 So I know what that is. I know I'm not allowed to have
13 it in the shop.

14 Q. So apart from your attorney's representation
15 that PHVO is the same thing as trans fat, do you ever
16 look for PHVO on a label?

17 A. I don't even know what PHVO is.

18 Q. Okay. So --

19 A. Even if I saw it on a label I wouldn't know
20 what that is.

21 Q. So when you buy products you don't look at the
22 ingredients to see if there's PHVO in there, do you?

23 A. I don't even know what PHVO -- why would -- how
24 would that affect -- I don't even know what that is.

25 Q. Okay. Now, are you aware that you are suing

1 Ferrero, in part, because you allege that Nutella used to
2 contain PHVO?

3 A. In part, because it used to contain that?

4 Q. Uh-huh.

5 A. Okay, yeah.

6 Q. Did you --

7 A. I mean --

8 Q. Did you know that?

9 A. I think so, yes, I did know that. I know that
10 the case goes back to prior to me seeing the ad and prior
11 to me buying the Nutella, and I know that Nutella at some
12 point prior to that did contain trans fat. So I would --
13 that would be a fair assumption that I could make, yes.

14 Q. And why -- why are you suing Ferrero for the
15 periods before you saw the ads and before you bought it?

16 A. Because --

17 MR. MARRON: Objection; calls for a legal
18 conclusion.

19 MR. BISH: It does not.

20 Q. You can answer.

21 MR. MARRON: Okay. Go ahead.

22 THE WITNESS: Honestly, because after I
23 purchased it, was giving it to my kids. And then I found
24 out that it wasn't this great nutritious, wholesome
25 product that I believed it to be. I felt duped by

1 Nutella.

2 BY MR. BISH:

3 Q. So you were mad?

4 A. I felt -- I felt like they were trying to trick
5 me. And I -- and I did honestly -- I honestly bought
6 Nutella because I thought it was nutritious and good for
7 my kids.

8 Q. Okay.

9 A. I didn't buy it in place of a Twinkie. I
10 didn't buy it in place of a candy bar. I bought it as a
11 healthy alternative to peanut butter. And that's not
12 what it is.

13 Q. Okay.

14 A. I don't feel that it represented itself to be
15 honestly what it is, to me. I felt like I was being
16 tricked. And I really was upset about it. I honestly
17 was like what? I just bought that -- I just bought a
18 bunch of that at Costco for my kids, and I spent more
19 than I would for the peanut butter that I usually get
20 them. And there's been times when I've had ten kids in
21 my house. I've had two foster children. I raised my
22 niece. Every penny that I spend at the grocery store
23 counts. I don't make a lot of money. And I spent more
24 on Nutella than I would have spent on peanut butter. And
25 only reason I bought it is because I thought it was good

1 for my kids. I wouldn't have bought otherwise.

2 Q. Is that why you're suing back to the year 2000?

3 A. I felt tricked by Nutella's advertisement, that
4 is why.

5 Q. That's why your lawsuit dates back to 2000?

6 A. I didn't pick the dates. I didn't pick the
7 dates. I didn't write the dates in anywhere.

8 Q. So getting back to PHVO, and I appreciate that
9 you -- you don't -- that you don't know what it is and
10 that you don't look for it when you buy products, right?

11 A. Right.

12 MR. MARRON: Using it interchangeably with
13 trans fat.

14 THE WITNESS: Okay.

15 BY MR. BISH:

16 Q. Now, are you aware that -- so are you aware
17 that PHVO was taken out of Nutella at some point before
18 you bought the product?

19 A. Oh. Before I bought the product, no. Before I
20 bought the product I didn't even know that it used to
21 contain trans fat.

22 Q. So you don't know if it was a voluntary
23 decision to remove --

24 A. My only exposure to Nutella was the TV
25 commercial and maybe an ad I seen in a magazine.

1 Q. Okay. Do you have any reason to doubt that the
2 decision to eliminate PHVO from Nutella was made
3 voluntarily?

4 A. Do I what, I'm sorry?

5 Q. Do you have any reason to doubt that the
6 decision to eliminate PHVO from Nutella was made
7 voluntarily?

8 MR. MARRON: Objection; calls for speculation,
9 form of the question, assumes facts not in evidence,
10 calls for an expert opinion.

11 BY MR. BISH:

12 Q. You can answer.

13 MR. MARRON: Calls for a legal conclusion.

14 You can answer.

15 THE WITNESS: I doubt it. Because it's cheaper
16 for me to put margarine on a bagel than it is butter, and
17 I would make more money if I did that. I can't do that.
18 So I think in a way that maybe they did it to make
19 themselves look good. And -- and that was probably the
20 only reason. Because I think financially they were
21 probably spending less money when it had trans fat in it
22 and making more money on the product.

23 Do you hear what I'm saying?

24 BY MR. BISH:

25 Q. Are --

1 A. Maybe it was voluntarily done, but I don't
2 think it was in lieu of like making it better for us.

3 Q. But are you happy that Nutella --

4 A. Oh, yeah. Yeah.

5 MR. MARRON: Wait till he asks the question,
6 okay.

7 BY MR. BISH:

8 Q. Now, do you commend the decision to take PHVO
9 out of Nutella?

10 MR. MARRON: Objection; assumes facts in
11 evidence -- not in evidence.

12 THE WITNESS: Ask me again.

13 BY MR. BISH:

14 Q. Do you commend the decision to take PHVO out of
15 Nutella?

16 A. As trans fat out, yes.

17 Q. Okay. It had already been done before you
18 bought the product, right?

19 A. Right.

20 Q. And instead of commending the company for doing
21 so, you sued Ferrero U.S.A., right?

22 A. For -- yes.

23 MR. MARRON: Objection; argumentative.

24 BY MR. BISH:

25 Q. Okay. Do you know if the Nutella you bought

1 contains trans fat?

2 A. No, it does not.

3 Q. In your mind, is industrial produced trans fat
4 better or worse than naturally occurring trans fat?

5 A. I don't know.

6 MR. MARRON: Objection; calls for an expert
7 opinion.

8 BY MR. BISH:

9 Q. Have you ever thought about it?

10 A. No.

11 Q. So you don't have a view one way or the other
12 if it's --

13 A. Versus naturally. Okay, you're saying natural
14 trans fat versus man-made trans fat?

15 Q. Yeah, are you aware there's a difference?

16 A. No. I thought they were -- I mean, trans fat
17 is trans fat. I didn't know there was like a man-made
18 one and a natural one.

19 Q. So you don't know, for example --

20 A. I thought just like "trans" in itself meant
21 man-made.

22 Q. So you don't know, for example, that milk has
23 trans fat in it?

24 A. No, I didn't know that.

25 Q. If milk, in fact, does contain some trace

1 amount of trans fats, will you stop buying milk?

2 A. I wouldn't mind switching to almond milk. I
3 like it and it has less calories and it tastes really --
4 I like it. I would drink almond milk. And I think my
5 kids would too.

6 Q. All right. So if -- if milk and butter --

7 A. If I -- yeah. Now that you've called it to my
8 attention, if I go look at the label of milk and it has
9 trans fat, I really don't want it in my house.

10 Q. Okay.

11 A. I mean, I've heard, like, it causes like heart
12 conditions and cancerous and -- you know, I mean, I don't
13 know specifically what the downfalls are to it, but I
14 know that there are some and why would I expose my kids
15 to that?

16 Q. But you don't know -- so let's back up. Now,
17 there's -- you don't know that there's a difference
18 between natural trans fat and artificial trans fat.

19 A. I didn't know. I just thought, in general,
20 trans fat was not good for you.

21 Q. And so if there's natural trans fat in some
22 trace amounts of milk --

23 A. If I could find a milk without any in it, I
24 would go for that one, yeah.

25 Q. Now, do you recall in the complaint you filed,

1 the first amended consolidated complaint that we looked
2 at earlier, that complaint references a number of studies
3 about trans fat.

4 Do you recall that?

5 A. Yeah.

6 Q. Did you review those studies?

7 A. I glanced at them. I found it kind of boring.

8 Q. You didn't read, for example, in there about
9 the difference between artificial and natural trans fat
10 in those articles?

11 A. No.

12 Q. Not important to you?

13 A. Not that it's not important to me, but I was a
14 little stressed getting ready for it. So I didn't think
15 it would be pertinent that I needed to know those kinds
16 of things for this.

17 Q. Well, putting this -- when you say "this," you
18 mean this deposition?

19 A. For -- yeah, with you. Yeah, I would be asked
20 the difference between natural trans fat. And I didn't
21 know that -- I mean, if I was a nutritionist, I would
22 expect you to ask me those kinds of questions. But just
23 being a mom, I didn't really expect you to ask me that.

24 Q. And I'm not -- and I'm not -- I'm sorry, my
25 question was not about today, it was in general.

1 A. I didn't know there was two different kinds of
2 trans fat. I thought there was one bad trans fat.

3 Q. Okay. In your opinion, should the FDA prohibit
4 foods containing trans fat?

5 A. They prohibit me from serving them in my
6 restaurant, so yeah.

7 Q. So yes, in your opinion, the FDA should
8 prohibit food companies --

9 A. I believe that they do it for a reason.

10 Q. Okay. Let me just finish my question for the
11 benefit of the reporter.

12 In your opinion, should the FDA prohibit food
13 companies from companies selling products that contain
14 trans fat?

15 A. I believe if the FDA feels that they're not
16 healthy for people, and they want to do that, that
17 they're doing that in the best interests of the people.
18 And yes.

19 Q. I'm asking in your opinion.

20 A. In my opinion, I believe that the FDA is there
21 to protect us. The FDA is there to protect us. So if
22 they make a decision like that, I believe in them, I
23 trust them. So yeah, I do. I do believe that if they're
24 doing it it's for a reason.

25 Q. And if the FDA decides not to ban that product,

1 do you also trust the FDA?

2 A. I do. I think that if they chose not to ban
3 the product, and there wasn't enough evidence or there
4 wasn't enough something to prohibit it from being sold
5 all over.

6 Q. So if the FDA looks at, say, trans fat and they
7 make their decisions, you're going to defer to those
8 decisions?

9 MR. MARRON: Yeah, objection; calls for --

10 THE WITNESS: But with --

11 MR. MARRON: -- expert opinion.

12 You can go ahead and answer.

13 THE WITNESS: But with -- like there are things
14 that have trans fat, but I have the choice -- at least
15 they make it put it on the label so that I can look at
16 it. In the very front it says contains trans fat, but I
17 can make that choice. For me personally, I don't think I
18 would -- if something said that it contained trans fat on
19 it, I don't think I would buy that for my family.

20 I've seen products contains -- on a margarine
21 that contains, you know, trans fat. I wouldn't buy that.
22 I wouldn't go out of my way to buy that product. If I
23 knew that there was a product that I had in my home that
24 had a lot of trans fat in it, I probably wouldn't buy it
25 again. Had I -- I don't think it's something that's good

1 for my family, I wouldn't buy -- I would try to stay away
2 from it.

3 BY MR. BISH:

4 Q. You just said "if something has a lot of
5 trans fat," how much is a lot?

6 A. Well, any, at this point. I don't think that
7 we're allowed in our restaurant to have any trans fat,
8 margarine with any trans fat in it.

9 Q. Artificial trans fat?

10 A. It didn't -- I don't recall it saying
11 artificial or telling us the difference. It just says
12 trans fat, period.

13 Q. Okay. So are you aware of -- of any of the FDA
14 regulations about the labeling of trans fat on products?

15 A. I think I am, yeah. I think I heard something
16 about that.

17 Q. What did you hear?

18 A. I think that they had to make it clear on the
19 label if it had trans fat in it. I know that they
20 require you to put like calorie counts and that kind of
21 stuff on foods.

22 Q. Do you know if there's a threshold amount above
23 which companies are required to disclose the presence of
24 trans fat?

25 A. I -- I'm not sure. There probably is. I would

1 imagine there would be.

2 Q. Do you trust the FDA's judgment on that amount?

3 A. In general.

4 Q. And specifically?

5 A. Well, I think that they are looking out for the
6 best interests of the people. So, I mean, I commend them
7 for that and...

8 MR. MARRON: Objection; assumes facts not in
9 evidence.

10 BY MR. BISH:

11 Q. So, for example, if the FDA said the threshold
12 amount for disclosure is point five grams, you don't have
13 a different number in your mind?

14 A. Well, I don't even know what a gram is. So,
15 you know what I mean. I know like teaspoons,
16 tablespoons, cup. If you put it in that, I would have a
17 better -- I can't even picture like what the amount of
18 what a gram would be.

19 MR. MARRON: Yeah, I'm going to have an ongoing
20 objection on the basis of it calls for an expert opinion
21 and assumes facts not in evidence for this line of
22 questioning.

23 BY MR. BISH:

24 Q. When did you first become aware of the health
25 risks of trans fat, as you've described them?

1 A. I would say really aware of it and paying
2 attention a little bit more is when my dad came to live
3 with us in -- I think it was 2006.

4 Q. So by 2006 you were aware of the risks of
5 trans fat?

6 A. Right. I was paying a little bit more
7 attention to what was in food, and he's diabetic and I
8 was caring for him.

9 Q. And what about saturated fat, are you concerned
10 about the health impacts of saturated fat?

11 A. Am I concerned about the health issues?

12 Q. The potential health affects of saturated fat?

13 A. Yeah.

14 Q. In what way?

15 A. In that if it's something that's bad for my
16 kids, and they're -- I wouldn't want to give them a
17 product that's saturated with it. In what way is it's
18 not good for you. It's not good for your health, why
19 would you want it? In general, it's just not good for
20 you.

21 Q. What about fat generally, just regular fat, are
22 you concerned about the potential health affects of
23 consuming fat?

24 A. I cut the fat off my steak, but I don't like --
25 I don't like the taste of it. But I -- just fat

1 naturally occurring in -- in foods that we eat, I'm not
2 super concerned.

3 Q. So you don't, for example --

4 A. I buy lean hamburger.

5 Q. So you don't, for example, have an amount of
6 fat in mind that ought to be consumed by you or your kids
7 in a given day?

8 A. No.

9 Q. Would you defer to the FDA's guidelines on
10 that?

11 A. No.

12 Q. You have your own?

13 A. I've never really thought about it. I don't
14 consume a lot of fat. I buy lean meat. I cut it off my
15 steaks. We don't eat a lot of red meat. I don't think
16 there's a lot of fat in eggs. I don't think the foods
17 that we're eating mostly, besides the snack food, I don't
18 have to worry about it.

19 Q. Pulled pork?

20 A. Pulled pork.

21 Q. That you bought at Costco?

22 A. What about it?

23 Q. Is there fat in pulled pork?

24 A. There's fat in pork, yes.

25 Q. Were you concerned about the amount of fat in

1 the pulled pork that you bought at Costco?

2 A. No. We eat it maybe once every three months.

3 Q. Okay.

4 A. It's not a daily occurrence. The meat most
5 served in my house is chicken. We hardly -- we rarely
6 eat red meat. And that's just personal preference, I
7 don't like it. I find it hard to digest.

8 Q. And I believe you said you -- in your house you
9 eat chicken thighs but in your cafe you serve chicken
10 breasts, correct?

11 A. Right.

12 Q. Is there a difference between the two?

13 A. One's a dark meat and one's a white meat.

14 Q. Any health difference between the two?

15 A. There's probably more fat in the thighs, but I
16 like the taste and it's cheaper. And I take the skin off
17 of it.

18 Q. And do you know that it's -- that fat is an
19 essential nutrient in the human being's diet?

20 A. Yes.

21 Q. Yes.

22 Do you want to ensure that your kids consume
23 enough fat in their diet?

24 A. I don't really worry about it. I think there's
25 enough fat out there for it to go around.

1 Q. Takes care of itself?

2 A. I do.

3 Q. Okay. Do you have any views one way or the
4 other on how much fat is too much fat at breakfast?

5 A. No.

6 MR. BISH: Let's take a quick break and I'll go
7 and get the TV ads.

8 THE VIDEOGRAPHER: All agreed to go off the
9 record, we're off the record at 2:17 p.m.

10 (Recess from 2:17 p.m. to 2:24 p.m.)

11 THE VIDEOGRAPHER: We're back on record at
12 2:24 p.m.

13 BY MR. BISH:

14 Q. Ms. Barbato, I'm about to show you the
15 commercial that Ferrero calls mom, okay?

16 A. Uh-huh.

17 Q. And for the record, it's going to correspond to
18 paragraph 93 of the complaint, which is Defendant's
19 Exhibit 3, okay?

20 A. Okay.

21 Q. Okay.

22 (DVD being played.)

23 BY MR. BISH:

24 Q. Okay. My first question is: Do you know if
25 that's the ad you saw in approximately June 2009?

1 A. I don't think that's the one.

2 MR. MARRON: Objection; that misstates her
3 testimony.

4 BY MR. BISH:

5 Q. You don't think that's the one?

6 A. I don't know, it could have been. I don't -- I
7 remember the setting being a little different.

8 Q. Okay.

9 A. I think I've seen that one, though, before,
10 but...

11 Q. That's not the one that you were recalling?

12 A. I can't be sure.

13 Q. Okay. Okay. Number 2, I believe this is
14 called "Pass," P-a-s-s, which should correspond to
15 paragraph 92, I believe.

16 (DVD being played.)

17 THE WITNESS: I think that's the one I saw.

18 BY MR. BISH:

19 Q. You think --

20 A. I think that's the one I saw.

21 Q. Based on what?

22 A. Based on the phrase "and I can feel good about
23 giving it to them." And that it was three kids and I
24 kind of remember it being three kids. I thought two of
25 them were boys. I think that's the one.

1 Q. Pretty sure?

2 A. Hmm, I'd say 85 percent.

3 Q. Great.

4 And you saw that before you --

5 A. Well before I purchased Nutella.

6 Q. Okay. Last one called "Silence," which
7 corresponds to paragraph 91 of the complaint.

8 (DVD being played.)

9 THE WITNESS: I don't think I've seen that
10 before one.

11 BY MR. BISH:

12 Q. Okay. So we have a winner. No. 2, right, you
13 think, 85 percent?

14 A. I would say number 2 stands out the most --

15 Q. Okay.

16 A. -- as familiar to me.

17 Q. Okay. While you have Defendant's Exhibit 3 in
18 front of you --

19 MR. MARRON: What page?

20 MR. BISH: Give me a moment.

21 MR. MARRON: Okay.

22 BY MR. BISH:

23 Q. Okay. Page 4, paragraph 15. See it says:

24 Sales of Nutella in California are
25 greater than in any other single state in the

1 nation.

2 Do you see that?

3 A. Yes.

4 Q. Do you have any evidence to support this
5 allegation?

6 A. No.

7 Q. Now, paragraph 20, further down the page, it
8 says:

9 Plaintiffs have incurred and during the
10 pendency of this action will incur expenses for
11 attorneys' fees and costs herein.

12 Do you see that?

13 A. Yes.

14 Q. Have you incurred any attorneys' fees in this
15 action?

16 A. No.

17 Q. Okay. Paragraph 35. Do you see the phrase in
18 the first sentence "dangerous levels of saturated fat"?

19 A. Yes.

20 Q. In your mind, what is a dangerous level of
21 saturated fat?

22 MR. MARRON: Yeah, objection; attorney-client
23 privilege.

24 Other than what you've learned through your
25 counsel, you can -- you can state. Just don't state any

1 impressions or knowledge that you learned through
2 conversation with your counsel.

3 THE WITNESS: I have no idea.

4 MR. MARRON: Calls for -- and also calls for an
5 expert opinion.

6 BY MR. BISH:

7 Q. Okay. So if you look at paragraph 44 on
8 page 8. If you could just take a moment and read that
9 entire paragraph.

10 (Document reviewed by witness.)

11 BY MR. BISH:

12 Q. Now, you see that in the second -- third
13 sentence, it says:

14 Also known as vaccenic acid, natural
15 trans fat has never been linked to any negative
16 health effects in human beings and is
17 chemically different from artificial trans fat.
18 See that?

19 A. Yes.

20 Q. Do you recall reviewing this complaint before
21 it was filed?

22 MR. MARRON: Objection; attorney-client
23 privilege.

24 Other than what you've discussed with your --
25 with your attorney, you can answer this line of

1 questioning.

2 THE WITNESS: There's nothing I have to --

3 BY MR. BISH:

4 Q. Okay. Based on the allegations in the
5 complaint, it would -- you'd agree that there's a
6 difference between artificial and natural trans fat,
7 right?

8 MR. MARRON: Objection; calls for an expert
9 opinion.

10 Other than attorney-client privilege.

11 THE WITNESS: I have no idea.

12 BY MR. BISH:

13 Q. Okay.

14 A. There's PHVO.

15 Q. Okay. If you could look at paragraph 70.
16 Again, take your time to read the whole paragraph.

17 (Document reviewed by witness.)

18 BY MR. BISH:

19 Q. Okay?

20 A. Uh-huh.

21 Q. You see the last sentence:

22 Ferrero's addition of artificial
23 trans fat to Nutella during the class period
24 rendered it unfit for human consumption.
25 See that?

1 A. Yes.

2 Q. Do you agree with that?

3 MR. MARRON: Objection; calls for an expert
4 opinion, attorney-client privilege, incomplete
5 hypothetical and form.

6 THE WITNESS: I wouldn't have -- I wouldn't --
7 how would I deem something not fit for human consumption?
8 I never...

9 BY MR. BISH:

10 Q. Okay. It goes on:

11 And rendered its concurrent
12 advertisements, labels and representations that
13 Nutella was "healthy" nutritious, and part of a
14 balanced breakfast particularly false,
15 misleading and deceptive.

16 Do you see that?

17 A. Yes.

18 Q. Can you point me to a single advertisement that
19 used those words before 2008?

20 MR. MARRON: Yeah; objection; assumes facts not
21 in evidence, misstates the record with respect to what
22 the complaint says.

23 THE WITNESS: Before 2008?

24 BY MR. BISH:

25 Q. Yes.

1 A. No.

2 Q. If you look at paragraph 74.

3 MR. MARRON: Same objection.

4 MR. BISH: No question yet.

5 Q. (Reading:)

6 Nutella also uses generally modified soy
7 lecithin which has been generally engineered
8 and sprayed with pesticides and is not healthy
9 for children's growth and development.

10 Do you see that?

11 A. Yeah.

12 MR. MARRON: Same objection.

13 BY MR. BISH:

14 Q. Do you have any basis for that allegation?

15 MR. MARRON: Same objection; calls for an
16 expert opinion, attorney-client privilege.

17 If it's any knowledge that you've garnered
18 through our discussions, then I advise you not to -- not
19 to give an answer.

20 THE WITNESS: Then I'm not giving an answer.

21 BY MR. BISH:

22 Q. And you were shaking your head, does that mean
23 no?

24 MR. MARRON: It means she's not answering.

25 MR. BISH: You're not answering -- so I've

1 asked if you have any reason to believe -- or, I'm sorry,
2 do you have any basis for that allegation, and you're
3 going to instruct her not to answer?

4 MR. MARRON: Right.

5 MR. BISH: On attorney-client privilege?

6 MR. MARRON: Correct.

7 BY MR. BISH:

8 Q. Okay. Paragraph 76.

9 Lawyers, huh?

10 Go ahead and read paragraph 76, and let me know
11 when you're done.

12 (Document reviewed by witness.)

13 THE WITNESS: Okay.

14 BY MR. BISH:

15 Q. And do you understand the phrase "class
16 period"?

17 A. The -- from the beginning of the date set in
18 the -- they're saying from like 2000 -- 2000.

19 Q. When you say "they," who's they?

20 A. The case, our -- our -- our complaint.

21 Q. You mean you?

22 A. Yes.

23 Q. Okay.

24 A. I didn't personally put all this into the
25 paperwork. I didn't personally draft any of it.

1 Q. You didn't type it?

2 A. I didn't type it, no.

3 Q. But you wanted it to go back to the year 2000?

4 A. That was --

5 MR. MARRON: Objection; attorney-client

6 privilege.

7 Don't -- don't reveal any discussions you had

8 with your lawyer regarding the class period.

9 BY MR. BISH:

10 Q. Don't know tell me what you told your lawyer.

11 I'm saying did you want to go back to the year 2000?

12 A. I didn't have a -- I didn't have a -- I don't

13 have an opinion on it one way or the other.

14 Q. Okay.

15 A. I didn't make my purchases till 2010. I didn't

16 see the commercial till 2009. But I did hear that it had

17 previously contained trans fat after I purchased it and

18 after I seen the commercials.

19 Q. So looking at paragraph 76:

20 Throughout the class period, Ferrero

21 engaged in, and Plaintiffs -- that being you,

22 right -- and members of the class were exposed

23 to a long-term advertising campaign in which

24 Ferrero utilized various forms of media

25 including but not limited to print

1 advertisements, print advertising on the
2 Nutella label, and elsewhere, websites,
3 television commercials, physicians and unpaid
4 press coverage.

5 I could go on but I'll stop there.

6 Now, do you have any reason to believe that
7 Ferrero advertised Nutella on television in the United
8 States before 2008?

9 A. I don't remember seeing it. So I would have no
10 reason to believe that prior to 2008.

11 Q. What about in magazines, any reason to believe
12 that Ferrero was advertising Nutella in magazines prior
13 to 2008?

14 A. I can't remember when I first saw the first
15 advertisement for Nutella. So I really -- I don't feel
16 comfortable answering that. Because, I mean, for all I
17 know, it could have been back in 2003. I can't remember.

18 Q. But you --

19 A. I know that when I first saw -- when I first --
20 my first recollection of seeing the advertisement on TV,
21 it wasn't foreign to me. So I know at some point before
22 seeing that first commercial, I seen it somewhere. It
23 wasn't like oh, what's this new thing? I mean, I had
24 seen it previous to that. That's my first recollection,
25 that one commercial with the three kids. That's what

1 first came to my mind when asked about the advertisement
2 of Nutella. But when I -- when recalling that
3 commercial, it wasn't foreign to me. So had I seen it
4 previously? I must have.

5 Q. Okay. Now, let's talk about the label.

6 You have the jars that you bought in front of
7 you, correct?

8 A. Yes.

9 Q. Is this the label that you saw?

10 A. Yes.

11 Q. Did you see any other version of the Nutella
12 label?

13 A. On the day that I purchased that?

14 Q. Sure.

15 A. Or any time?

16 Q. At any time.

17 A. I don't think so.

18 Q. Okay. So, for example, you didn't see a
19 product label in 2008?

20 A. I don't think so.

21 Q. At any time before 2008?

22 A. I don't think so. I'm not sure.

23 Q. What were you doing on the 4th of July this
24 year?

25 A. We had a party at the shop.

1 Q. And do you recall the 4th of July was on a
2 Monday this year?

3 A. I do now.

4 Q. Okay. That helps.

5 Do you recall what you were doing the weekend
6 before the 4th of July?

7 A. No.

8 Q. Did you review a copy of this complaint on --
9 around July 3rd?

10 A. I don't remember.

11 Q. Okay. So you don't recall approving this
12 particular paragraph?

13 A. I just don't remember. It was a very busy time
14 at the shop. I was doing a lot of catering, too. That
15 weekend was very busy. And one of my partners was out.

16 Q. Okay.

17 MR. MARRON: There's no question pending. I
18 mean, rather than offer additional information. You can
19 certainly answer Mr. Bish's question.

20 THE WITNESS: Well, I feel bad that I don't
21 remember. But I just don't.

22 BY MR. BISH:

23 Q. Paragraph 89, if you would.

24 MR. MARRON: Yeah, don't feel bad. That's a
25 perfectly acceptable response.

1 BY MR. BISH:

2 Q. Go ahead and read paragraph 89, and take a look
3 at the picture.

4 A. Okay.

5 Q. Are you familiar with the phrase "glycemic
6 index"?

7 A. No.

8 Q. Ever heard of it before?

9 A. I've heard of like a hypoglycemic.

10 MR. MARRON: I'll just object along this line
11 of questioning, calls for expert opinions.

12 BY MR. BISH:

13 Q. Do you see the second sentence, paragraph 89,
14 it says, "This statement is false."

15 You see that?

16 A. Yes.

17 Q. Okay. Now, this is your complaint, correct?

18 A. Right.

19 Q. You approved the filing of this complaint,
20 correct?

21 A. Yes.

22 Q. So you understand what that means, correct?

23 MR. MARRON: Objection; attorney-client
24 privilege.

25 Other than what you've learned from your

1 counsel explaining, you know, terms to you and the
2 subject matter of this complaint, or this paragraph in
3 particular, if you have an independent knowledge.

4 THE WITNESS: I did -- yeah, I didn't word it
5 every word specifically, no. But I agree with the
6 statement.

7 BY MR. BISH:

8 Q. You agree that -- okay. So when the phrase,
9 this statement, what is that referring to in your
10 complaint?

11 A. The previous sentence.

12 Q. Says:

13 Ferrero states that it recommends that
14 Nutella is eaten at breakfast because it
15 purportedly has a low glycemic index so that it
16 helps maintain energy and concentration levels
17 longer.

18 You see that?

19 A. Yes.

20 Q. What part of that sentence is false?

21 A. I think it's saying that the low glycemic index
22 and helping you maintain energy and concentration levels
23 longer.

24 Q. What is the glycemic index of Nutella?

25 A. I'm not sure.

1 Q. So how do you know that it's false?

2 A. What I think this -- this sentence is saying,
3 to me, is that it's -- the advertisement is trying to --
4 to indicate that it doesn't have that much sugar in it or
5 that it's healthier. When, actually, the -- the highest
6 ingredient in it is sugar.

7 Q. Okay.

8 MR. MARRON: Wait for a question.

9 BY MR. BISH:

10 Q. Now, if you go down to the picture.

11 A. Right.

12 Q. I know it's small print, it says:

13 "Nutella has a glycemic index of 33.

14 You see that?

15 A. Down here (indicating)?

16 Q. Yeah.

17 MR. MARRON: Yeah, I don't see it down there.

18 THE WITNESS: Oh, yeah. Okay. I see it, sort
19 of.

20 BY MR. BISH:

21 Q. Do you want me to read the whole thing?

22 A. No, you don't have to read the whole thing.
23 You're asking me what I just told you, that sugar is the
24 most -- the highest ingredient in Nutella. So that's
25 what I'm telling you I feel it makes that a false

1 statement. I don't think that sugar maintains energy and
2 promotes concentration.

3 Q. What about fat?

4 A. I -- I don't know fat -- okay. No, I don't
5 think that -- I think in girls fat is more productive
6 than in boys.

7 Q. Do you know if fat is a slow release nutrient?

8 A. I believe it is.

9 Q. Which would allow energy levels to be
10 prolonged?

11 A. Right, fat. But this is saying sugar. Isn't
12 it saying sugar?

13 Q. Where does it say that?

14 MR. MARRON: Yeah, I'm going to object on this
15 line of questioning. It misstates the -- the complaint,
16 it misstates the record. And it also calls for an expert
17 opinion.

18 THE WITNESS: What I think is that sugar does
19 not help you maintain energy and it doesn't increase your
20 concentration time.

21 BY MR. BISH:

22 Q. So --

23 A. Or anything. I don't think that sugar does
24 that.

25 Q. Okay. But you think that fat does?

1 A. I don't know that fat does.

2 Q. Okay.

3 A. I don't know that for sure.

4 Q. So, again, it's -- the statement says:

5 Nutella has a glycemic index of 33 which
6 means it is a low GI food.

7 Do you have any reason to believe that is a
8 false statement?

9 MR. MARRON: Objection; attorney-client
10 privilege.

11 Other than what you've learned from your
12 attorneys. If you have an independent knowledge of that
13 other than what you've already stated on the record, then
14 you can answer. But please don't reveal any of the
15 substance or knowledge you've garnered from discussions
16 with your lawyers.

17 THE WITNESS: I'm not going to answer that.

18 BY MR. BISH:

19 Q. So I've asked if you have any reason to believe
20 that is a false statement.

21 A. And I've told you --

22 Q. Your attorney --

23 A. -- what I believe.

24 Q. Your attorney has instructed you not to answer
25 based on privilege, and you're going to follow that

1 instruction?

2 A. But I answered your first question that you
3 asked me. I'm not sure about the glycemic index. I'm
4 not a nutritionist. I never went to school to be a
5 nutritionist. I know what sugar is and I know what kids
6 do on sugar, and I do not believe that sugar maintains
7 energy and concentration levels longer. I don't believe
8 that.

9 Q. Okay.

10 A. So as far as 89, the paragraph, do I agree with
11 what that paragraph is saying? Yeah, I do.

12 Q. That --

13 A. I believe that saying that Nutella, being half
14 sugar, that this jar is half sugar, that's your first
15 ingredient on here, mostly sugar, that this is going to
16 help my kids concentrate at school better. I do not
17 believe that. I just don't.

18 Q. Okay. Okay paragraph 99.

19 (Document reviewed by witness.)

20 THE WITNESS: Okay.

21 BY MR. BISH:

22 Q. Okay. Very simple question. The third
23 sentence:

24 These claims are misleading because
25 Nutella contains high levels of saturated fats,

1 sugar, oil, artificial flavoring and other
2 objectionable ingredients.

3 Do you see that?

4 A. Yes.

5 Q. What are the other objectionable ingredients
6 that you are referencing in that paragraph?

7 MR. MARRON: Objection; attorney-client
8 privilege.

9 Other than what you've learned from your
10 attorneys. If you have any independent knowledge of what
11 the other ingredients are, then you can state, or if you
12 know.

13 THE WITNESS: I don't have an answer for that.

14 BY MR. BISH:

15 Q. Okay. Paragraph 108, please.

16 (Document reviewed by witness.)

17 Q. See where it says "Nutella costs more than
18 similar products"?

19 A. Yes.

20 Q. Okay. We've talked about peanut butter, right?

21 A. Yes.

22 Q. What are the other similar products you're
23 referring to?

24 MR. MARRON: Same objection; calls for an
25 expert opinion.

1 You can answer.

2 THE WITNESS: Chocolate syrup, caramel, candy.

3 BY MR. BISH:

4 Q. What kind of candy?

5 A. Sugary candy.

6 Q. Any brand?

7 A. Not off the top of my head.

8 Q. What brand of syrup?

9 A. Log Cabin.

10 Q. What brand of caramel?

11 A. Lyons.

12 Q. Lyons.

13 Second half of that sentence. I'm paraphrasing
14 here so let me know if I'm incorrectly paraphrasing:

15 That Nutella would have cost less absent
16 the false and misleading statements and
17 material omissions described herein.

18 See that?

19 A. Yes.

20 Q. So my question is: Do you have any facts that
21 support the allegation that Ferrero would have charged
22 less for Nutella if it hadn't advertised it on TV?

23 MR. MARRON: Objection; calls for an expert
24 opinion.

25 You can answer.

1 THE WITNESS: Just want my opinion on that?

2 BY MR. BISH:

3 Q. No. I want facts, not opinions.

4 A. I don't have any facts on that.

5 Q. Okay.

6 A. I don't know how much they pay for advertising.

7 Q. Do you understand it's important to have facts
8 before you make -- no, strike that. Forget it.

9 A. I think that it says the first ingredient is
10 sugar is a fact too, a pretty good one.

11 Q. You can tell from looking at the label, right?

12 A. You can see that the first ingredient is sugar.
13 That means that's what mostly in it.

14 Q. For all the world to see, correct?

15 A. Right. Should put that right on the
16 commercial, and I wouldn't have a problem with it.

17 Q. What if it was on the front of the label?

18 A. That would be nice, too. But, big letters like
19 it is there (indicating). Or just like how it is right
20 there (indicating), hazelnut spread. Just right there in
21 front of hazelnut, sugar hazelnut flavor spread, I think
22 would be a better name for it.

23 Q. What if there was a big button on the front
24 that just said --

25 A. Sugar and hazelnut flavor, that would be a

1 better, like, advertising technique for it. I think it
2 would be more honest.

3 Q. Okay.

4 A. I don't put healthy on my brownies at the shop.

5 Q. Speaking of that, I notice on your menu you had
6 a little lemon or orange swirl as your logo, right?

7 A. It's a lemon swirl.

8 Q. Lemon swirl.

9 What is that meant to imply?

10 A. That was actually from the deli, and we don't
11 use that anymore.

12 Q. Why did you use it?

13 A. Because I used to make a lemon cheesecake.

14 Q. Oh. From lemons?

15 A. The sauce was from lemons. And I put some
16 lemon zest in the cheesecake.

17 Q. Okay.

18 A. And it was Shawna that came up with that. I
19 didn't really like it.

20 Q. Why not?

21 A. I think it's kind of boring, like a lemon. She
22 said well, they grow lemons in California and we're West
23 Coast, so... I don't know.

24 MR. MARRON: How much longer, you think, Dale?

25 MR. BISH: Half-hour.

1 MR. MARRON: Okay.

2 MR. BISH: We'll see.

3 BY MR. BISH:

4 Q. Have you ever visited the FDA's website to get
5 tips on eating healthy?

6 A. I might have.

7 Q. Do you recall one way or the other?

8 A. No.

9 Q. What sources have you visited or consulted to
10 learn how to eat healthy?

11 A. I've seen flyers come home from my kids school.
12 I took health class, I believe, in junior high school,
13 went over the food pyramid. I don't know, just generally
14 those kind of things.

15 MR. BISH: I'm going to mark as Defendant's
16 Exhibit No. 12.

17 (The document referred to was marked by
18 the CSR as Deposition Exhibit 12 for
19 identification and attached to the
20 deposition transcript hereto.)

21 BY MR. BISH:

22 Q. Your copy's right over here (indicating).

23 A. Okay.

24 Q. So if you could --

25 MR. BISH: Counsel, stop showing her things.

1 Q. Ms. Barbato, have you seen Defendant's
2 Exhibit 12 before?

3 A. I believe so.

4 Q. If you look at the page 3 of Exhibit 12, you
5 see a signature?

6 A. Yes.

7 Q. Is that your signature?

8 A. Yes.

9 Q. Did you sign this document?

10 A. Yes.

11 Q. Did you sign this document after you read it?

12 A. Yes.

13 Q. Did you read it carefully?

14 A. Probably not --

15 Q. Why not?

16 A. -- too carefully.

17 MR. MARRON: Can you give her an opportunity to
18 look at it.

19 BY MR. BISH:

20 Q. Please, yeah. Take all the time you want.

21 (Document reviewed by witness.)

22 MR. BISH: While she's reviewing it, just for
23 the record, Defendant's Exhibit 12 is a declaration of
24 Laura Rude-Barbato filed May 2nd, 2011.

25 (Document reviewed by witness.)

1 THE WITNESS: Okay.

2 BY MR. BISH:

3 Q. You've had a chance to --

4 A. Yeah.

5 Q. -- read the declaration carefully?

6 A. Right.

7 Q. Any mistakes in there?

8 A. Just that my son does triathlons, that's my
9 stepdaughter that does that. But other than that, I
10 don't see anything.

11 Q. Is your name spelled correctly?

12 A. No.

13 Q. On the first page?

14 A. Right.

15 Q. And on the second page?

16 A. Right.

17 Q. Okay. Didn't read it too carefully, then?

18 A. No.

19 Q. Okay.

20 A. But I remember the conversation in which this
21 was derived from.

22 Q. Who was that conversation with?

23 A. I believe it was with Ron.

24 Q. Then I'm not going to ask about it.

25 A. Don't break my heart, I love that bread.

1 Q. Oh, it's going to hurt.

2 A. All right, Ron. They're next.

3 Q. I'm --

4 MR. MARRON: No.

5 BY MR. BISH:

6 Q. I'm going to hand you --

7 A. Okay.

8 Q. -- a loaf of Milton's multi grain bread?

9 A. Healthy right on it. Do you see it says
10 healthy right on it.

11 Q. Don't sue them. Don't do that.

12 A. It says healthy right on the package.

13 Q. But Nutella doesn't.

14 A. I know. Look it. And it has the little heart
15 smart thing on it, American Heart Association.

16 MR. MARRON: Just wait till Mr. Bish asks a
17 question.

18 THE WITNESS: Trans fat, zero. It says
19 trans fat zero.

20 MR. MARRON: Okay. Do you have a question?

21 BY MR. BISH:

22 Q. Go ahead and take a look at the nutrition facts
23 panel, if you will.

24 A. Okay.

25 Q. Is there anything on there you don't

1 understand?

2 A. I don't really know what zinc is.

3 Anything at all that I don't understand? Even
4 though it sounds silly, I don't understand what calories
5 from fat. Like, is there calories that are not from fat
6 that are different? I really don't understand that.

7 MR. MARRON: You can't ask any questions here.
8 Just --

9 THE WITNESS: So I don't understand that. And
10 I really don't have any idea like what, how much a gram
11 is. I know what 1 percent, 6 percent, 7 percent. But as
12 far as like when they say gram, I really have no idea
13 what that is.

14 Any other questions you have for me?

15 BY MR. BISH:

16 Q. Are those the only things you don't understand
17 about the nutrition facts panel?

18 A. I mean, I have a basic understanding of -- of
19 sodium carbohydrates are. Fiber. I know what sugar is.
20 Protein. Just your basic -- a basic understanding of
21 these terms.

22 Q. Okay.

23 A. I couldn't expertly answer questions about
24 them.

25 Q. Then I will try my best to not ask --

1 A. Okay.

2 Q. -- any expertly questions.

3 A. But I don't sugar as the main ingredient. For
4 that I'm happy.

5 Q. Okay. Now, if you look at the bottom of the
6 label, you see how it's kind of a larger label than the
7 one, for example, on Nutella, right?

8 I know it well, you don't have to show me.

9 A. Oh, okay.

10 Q. You see at the bottom where it has some ranges
11 for the amount of fat to consume?

12 THE WITNESS: I don't know what he means.
13 This?

14 BY MR. BISH:

15 Q. Here (indicating).

16 MR. MARRON: I'm not sure what he means either.

17 BY MR. BISH:

18 Q. All right. So at the bottom of the nutrition
19 facts panel where it says "calories, 2,000" --

20 A. Right.

21 Q. -- 2,500.

22 A. Right.

23 Q. I'm sorry.

24 MR. MARRON: Counsel, just for etiquette, can I
25 take a look at it before you start asking her questions?

1 MR. BISH: Sure.

2 MR. MARRON: I just want to take a look at it,
3 if I may.

4 MR. BISH: Take your time.

5 MR. MARRON: All right.

6 BY MR. BISH:

7 Q. I'll hand this back to you.

8 A. Okay.

9 Q. It says "calories" --

10 A. Right.

11 Q. -- "2,000, 2,500."

12 A. Right.

13 Q. And we talked this morning, you believe at
14 least two of your sons consume about 3000 calories a day?

15 A. During water polo season, yes.

16 Q. Right.

17 Okay. And then it has, breaks down on this
18 column total fat, saturated fat, cholesterol, sodium,
19 total carbohydrates, dietary fiber. Okay?

20 A. Okay.

21 Q. Now, pretty nifty, right?

22 A. Yeah.

23 Q. And it shows across, it has some recommended
24 amounts?

25 A. Where does it have recommended amounts?

1 Q. The -- the numbers corresponding to --

2 A. Oh, how much, oh, should come from fat, should
3 come from saturated -- okay.

4 Q. Pretty handy, right?

5 A. Yeah.

6 Q. Now, you don't have, in your mind, a different
7 amount of fat that your kids ought to consume, do you?

8 MR. MARRON: Objection; calls for an expert
9 opinion.

10 You can answer if you know.

11 THE WITNESS: I don't know.

12 BY MR. BISH:

13 Q. You don't -- you don't know if you have a
14 different amount?

15 A. That I think that they should be consuming, no,
16 I don't have one.

17 Q. No view one way or the other?

18 A. No. And -- we kind of -- kind of went over
19 this already, didn't we?

20 Q. Yeah. I'm just saying --

21 MR. MARRON: As I say, you can answer his
22 question but don't ask him a question.

23 THE WITNESS: Okay.

24 BY MR. BISH:

25 Q. I'm just trying to see if this would help

1 inform your mental thinking about how much fat to consume
2 in a day?

3 A. It would help, yeah.

4 Q. Okay.

5 A. I like that.

6 Q. You buy this bread all the time, right?

7 A. I do.

8 Q. A lot, right?

9 A. A lot.

10 Q. And you love it?

11 A. I love it.

12 Q. Okay. And how much sugar is in each serving?

13 A. It says five grams.

14 Q. Now, is that a lot of sugar?

15 A. Well, I don't know. They didn't give me the
16 percentage over here (indicating) so I don't know.

17 Q. And why do you think that is?

18 A. Because it's higher than 12 percent, it's
19 higher than a good percentage?

20 Q. Let me try to help you.

21 MR. MARRON: Yeah, I'd like to --

22 BY MR. BISH:

23 Q. Let me try to help you out.

24 MR. MARRON: -- instruct my client not to
25 engage in any speculation or conjecture.

1 BY MR. BISH:

2 Q. Hold on a second.

3 I'm going to hand you --

4 MR. MARRON: If you don't know, just say you
5 don't know.

6 BY MR. BISH:

7 Q. I'm going to hand you what was previously
8 marked as Exhibit 6. There you go.

9 A. You guys are killing trees here.

10 MR. BISH: Here you go.

11 MR. MARRON: Thank you, sir.

12 MR. BISH: Why don't you take your time and
13 read this while we change tapes real quick.

14 MR. MARRON: We're off the record.

15 THE VIDEOGRAPHER: This concludes media number
16 2, Volume I, in the deposition of Laura Rude-Barbato.
17 We're off the record at 3:07 p.m.

18 (Recess from 3:07 p.m. to 3:14 p.m.)

19 THE VIDEOGRAPHER: This is the start of media
20 number 3, Volume I, in the deposition of Laura
21 Rude-Barbato. We're on the record at 3:14 p.m.

22 BY MR. BISH:

23 Q. Ms. Barbato, have you had a chance to review
24 the exhibit I handed you? Yeah.

25 A. Just the front page of it.

1 Q. Why don't you go ahead and read the whole
2 thing.

3 A. Do I have to read the whole thing or just --

4 Q. No, you can review. And let me know when you
5 want me to start asking questions. I'm going to ask
6 questions on the first, the second, the fifth and sixth
7 page.

8 A. Okay. Go ahead and give me the questions.

9 Q. So looking at the sample label for macaroni and
10 cheese, you see that?

11 A. Yes.

12 Q. Start's here with the serving size, right?

13 A. Yes.

14 Q. Now, when you're giving your kids food or
15 preparing meals, do you pay attention to the serving
16 size?

17 A. No.

18 Q. This says, number 2, check calories. Do you
19 check the calories of the food you're giving your kids?

20 A. Not generally, no.

21 Q. And number 3, it says "limit these nutrients."
22 See that?

23 A. Yes.

24 Q. And you see number 4, it says, "get enough of
25 these nutrients."

1 You see that?

2 A. Yes.

3 Q. Okay. On the right-hand side it says
4 "5 percent or less is low, 20 percent or more is high."

5 Do you see that?

6 A. Yes.

7 Q. Now, when we were looking at the bag of
8 Milton's, and we were looking at sugar, you noted that
9 sugar did not have a percentage, right?

10 A. Right.

11 Q. But saturated fat, total fat do have a
12 percentage, correct?

13 A. Yes.

14 Q. Okay. And do those percentages make it easier
15 for you to have an appreciation for how much of the
16 nutrients or characteristic is in the product?

17 MR. MARRON: Objection; form and lack of
18 foundation and incomplete hypothetical.

19 BY MR. BISH:

20 Q. Are those percentages helpful to you?

21 MR. MARRON: Same objection.

22 THE WITNESS: I guess not because I have never
23 looked at it.

24 BY MR. BISH:

25 Q. Okay. I mean for foods generally, not just

1 this bread. Does having those percentages on the
2 right-hand side help you understand what --

3 A. I don't generally look at them, so I have to
4 say not to me, no.

5 Q. Have you ever looked at the nutrition facts
6 panel for Cinnamon Toast Crunch?

7 A. I don't think so.

8 Q. When your kids eat Cinnamon Toast Crunch, what
9 serving size do they generally eat?

10 A. Probably a cup.

11 Q. About one cup?

12 A. Probably. Maybe less.

13 Q. Okay. What about Fruit Loops -- I'm sorry,
14 Fruity Pebbles?

15 A. Probably less than a cup. [REDACTED] never finishes
16 a bowl of cereal.

17 Q. Okay. Now, if you look at page 5, see about a
18 quarter of the way down it says "dietary tradeoffs."

19 You see that paragraph?

20 A. Oh, yeah.

21 Q. (Reading:)

22 You can use the percent DV, which means
23 daily value, to help you make dietary tradeoffs
24 with other foods throughout the day. You don't
25 have to give up your favorite food to eat a

1 healthy diet.

2 Do you agree with that?

3 A. Yes.

4 Q. And as a mom, do you make dietary trade-offs
5 throughout the day for your kids?

6 MR. MARRON: Objection. Other than examples
7 she's given previously?

8 MR. BISH: No.

9 THE WITNESS: I don't know what you mean by
10 "tradeoffs."

11 BY MR. BISH:

12 Q. Okay. If your kids eat a lot of sugar, say,
13 for lunch, do you try to limit the amount of sugar they
14 have the rest of the day?

15 A. Yes.

16 Q. Okay. That's a trade-off, right? You
17 understand that?

18 A. Okay.

19 MR. MARRON: Objection; the form and incomplete
20 hypothetical.

21 BY MR. BISH:

22 Q. Next sentence:

23 When a food you like is high in fat,
24 balance it with foods that are low in fat at
25 other times of the day.

1 You see that.

2 A. Yes.

3 MR. MARRON: Same objection.

4 BY MR. BISH:

5 Q. Now, as a mom, is that what you do with your
6 kids?

7 MR. MARRON: Same objection.

8 THE WITNESS: I try to.

9 BY MR. BISH:

10 Q. Now, this doesn't say anything about morning or
11 night, does it, just says other times of the day,
12 correct?

13 A. Yes.

14 Q. Do you have any -- when we talked about the
15 sources of nutrition that you looked at earlier, do any
16 of those sources say that it matters if the sugar is
17 consumed in the morning or afternoon or at night as a
18 dessert?

19 A. Did they -- did I have -- have I read that
20 anywhere?

21 Q. Yes.

22 A. I don't know.

23 Q. So that -- that decision is not based on any
24 science that you've seen, for example, that's just --

25 A. No.

1 Q. -- your decision?

2 A. Yeah.

3 Q. You just choose that?

4 A. I mean, I don't -- I might have read it
5 somewhere. I don't recall where.

6 Q. But that's not why you do it, you don't do it
7 because of some science that you read?

8 MR. MARRON: Objection --

9 THE WITNESS: I don't know. It could be
10 where --

11 MR. MARRON: Argumentative.

12 THE WITNESS: I don't know.

13 BY MR. BISH:

14 Q. If you turn to the next page, page 6, about
15 halfway down it says "sugars."

16 A. Uh-huh.

17 Q. (Reading:)

18 No daily reference value has been
19 established for sugars because no
20 recommendations have been made for the total
21 amount to eat in a day.

22 See that?

23 A. Yes.

24 Q. Now, do you have a personal amount of sugar
25 that should be eaten in a day for your kids?

1 MR. MARRON: Objection; calls for an expert
2 opinion and incomplete hypothetical.

3 THE WITNESS: Ask me again.

4 BY MR. BISH:

5 Q. Do you have a personal amount of sugar that you
6 believe your kids should eat in a day?

7 A. I can say like the amount of sodas that I think
8 are too much with candy a day. I wouldn't want -- you
9 know what I'm saying? I wouldn't want my eight-year-old
10 to drink more than one soda in a day. I wouldn't want
11 him to have more than one candy bar a day.

12 Q. And when you say soda, what kind of sodas does
13 your eight-year-old have?

14 A. Any kind of soda.

15 Q. Does your eight-year-old ever have a Coca-Cola?

16 A. I don't know Coca-Cola. Probably, yeah.

17 Q. Any idea how much sugar is in a Coca-Cola?

18 A. No.

19 Q. Doesn't matter?

20 A. Well, I assume there's a lot. I know there's a
21 lot. They never told me there wasn't. They never gave
22 me the impression it was good for my son to drink.

23 Q. Okay.

24 A. In fact, I know it's not good for him.

25 Q. So my question was: Do you have a personal

1 amount of sugar that you believe your kids should eat in
2 a day?

3 A. I tried to answer that in the aspect that I
4 don't think -- if he had more than one soda a day, I
5 wouldn't be happy with that. If he had a soda during a
6 day, would not let him have another one. If he had a
7 candy bar during the day, would not let him have another
8 one that day. If he had a serving of ice cream that day,
9 he would not get another one that evening.

10 Q. Okay.

11 A. So I can't tell you like in amounts of sugar,
12 but I can tell you in servings of snacks, sugary snacks,
13 what I would consider to be too much. If I know that he
14 had a bowl of Fruity Pebbles for breakfast and an orange,
15 and milk and juice, I would hope that -- I would like his
16 lunch to be a little bit more nutritious. Knowing that
17 he had that cereal this morning, I would like to see him
18 have a healthier lunch.

19 Q. And that's something you can control, correct?

20 A. Sometimes. But sometimes he eats breakfast and
21 lunch at school. And sometimes I go to work at 3:30 in
22 the morning, I don't get home till 2:00 in the afternoon.
23 So sometimes I have control over it. There's a large
24 period of their lives where I did have a lot of control
25 over it. Since I've opened my own business, not as much.

1 Q. Okay. So I'm going to try this again. The FDA
2 has not established a daily amount of sugar that should
3 be eaten in a day; they haven't taken a position one way
4 or the other on it, right?

5 A. Right.

6 MR. MARRON: Objection; misstates the record
7 and assumes facts not in evidence, and calls for an
8 expert opinion.

9 MR. BISH: Okay. Done --

10 MR. MARRON: I think so.

11 MR. BISH: -- Ron? Okay.

12 BY MR. BISH:

13 Q. As far as I know, the FDA has not established
14 an amount. And I'm reading from the FDA's website, "no
15 daily reference value has been established for sugars."

16 Do you have any reason to believe otherwise?

17 A. That they've -- that they've made --

18 Q. That they've set some number of sugar --

19 A. I have no reason to believe that they have, no.

20 Q. They haven't. Have you?

21 A. I just told you what mine were. I can't tell
22 you the amount of sugar it is. I can tell you the amount
23 of servings of sugary snacks such as soda, Twinkies,
24 candy bars, cakes, cookies. I know when I -- when he's
25 already had something like that, I wouldn't give him

1 another one.

2 Q. Okay.

3 A. I wouldn't offer it as a choice to him. If he
4 had a candy bar with his lunch on a field trip, I
5 wouldn't give him another candy bar when he came home.
6 He wouldn't have another candy bar that day.

7 Q. Okay, great.

8 So now, looking at the bag of Milton's, you see
9 it says five grams of sugar?

10 A. Yes.

11 Q. You have no problem with your kids eating
12 Milton's at breakfast, correct?

13 A. No.

14 Q. In fact, you like it.

15 A. This is the first time I've read this. But --
16 I don't think that I would object to them having this for
17 breakfast even after having read this because the first
18 ingredient in it is flour. And I don't see -- oh, wow.
19 Sugar is --

20 MR. MARRON: Is there a question pending?

21 MR. BISH: I'm letting her review what she
22 wants to review, Ron.

23 MR. MARRON: Okay.

24 MR. BISH: You pushing me?

25 MR. MARRON: I'm just asking if there's a

1 question pending.

2 BY MR. BISH:

3 Q. So my question is: Are you okay with five
4 grams of sugar at breakfast?

5 MR. MARRON: Objection; calls for an expert
6 opinion.

7 THE WITNESS: If you would show me what a gram
8 was maybe I could give you a better --

9 MR. MARRON: Yeah, and an incomplete
10 hypothetical. What type of sugar, for instance.

11 MR. BISH: Let's -- okay. Let's object to
12 form, Ron. I've asked a number of times. Knock it off.

13 Q. Is five grams too much at breakfast?

14 A. I don't know.

15 Q. Okay. Is ten grams too much at breakfast?

16 A. I don't know.

17 Q. Is 20 grams too much at breakfast?

18 A. I don't know.

19 Q. Is 30 grams too much at breakfast?

20 A. I don't know what a gram is. I don't know.

21 Q. No position?

22 A. No position.

23 Q. Okay, thanks.

24 MR. BISH: Let's go off the record and see if
25 we can wrap up here.

1 THE VIDEOGRAPHER: Okay. All agreed to go off
2 the record, we're off the record at 3:26 p.m.

3 (Recess from 3:26 p.m. to 3:28 p.m.)

4 THE VIDEOGRAPHER: We're back on record at
5 3:28 p.m.

6 MR. BISH: Ms. Barbato, on behalf of my client,
7 I'd like to thank you for your time today.

8 THE WITNESS: Thank you.

9 MR. BISH: I've enjoyed it.

10 THE WITNESS: I'm sure you have.

11 MR. MARRON: Thank you very much. I guess
12 we're done.

13 THE VIDEOGRAPHER: This concludes media
14 number 3 of 3, Volume I, in the deposition of Laura
15 Rude-Barbato. We're off the record at 3:29 p.m.

16 (The document referred to was marked by
17 the CSR as Deposition Exhibit 13 for
18 identification and attached to the
19 deposition transcript hereto.)

20 (Deposition concluded at 3:29 p.m.)

21 * * *

1 DECLARATION UNDER PENALTY OF PERJURY

2
3 I, LAURA RUDE-BARBATO, do hereby certify under
4 penalty of perjury that I have read the foregoing
5 transcript of my deposition taken September 30, 2011;
6 that I have made such corrections as appear noted herein,
7 in ink, initialed by me; that my testimony as contained
8 herein, as corrected, is true and correct.

9
10 DATED this _____ day of _____,
11 2011, at _____, California.

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20 _____
21 LAURA RUDE-BARBATO
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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, NIKKI ROY, Certified Shorthand Reporter,
certificate number 3052, for the State of California,
hereby certify:

The foregoing proceedings were taken before me at the time and place therein set forth, at which time the deponent was placed under oath by me;

The testimony of the deponent and all objections at the time of the examination were recorded stenographically by me and were thereafter transcribed;

The foregoing transcript is a true and correct transcript of my shorthand notes so taken;

I further certify that I am neither counsel for nor related to any party to said action nor in any way interested in the outcome thereof.

In witness whereof I have hereunto subscribed my
name 3rd day of October, 2011.

1 CORRECTION LIST

2

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